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ABSTRACT

This record of a Congressional subcommittee hearing on parental kidnapping begins with an introduction to the problems of approximately 25,000 children, who are abducted each year by a parent in violation of child custody and visitation court orders following divorce proceedings. Various legal technicalities are noted, including that parents are exempt from criminal prosecution under the federal kidnapping statute, i.e., when a parent kidnaps a child and takes him/her to another state, that state is not bound by the child custody decree issued in the first state. Several Congressional members introduce legislation to combat the problem of child snatching and describe experiences of their constituents who were victimized by child snatching. Testimony is provided by a panel of witnesses, comprised of members of Children's Rights Inc., a non-profit organization addressing the problems of child snatching as well as parents of kidnapped children. The motives of parental kidnappers are explored, dangers to the children are discussed, FBI involvement in cases is considered, and changes in legislation are suggested. Statements from representatives from the Department of Justice, the FBI, and the Department of Health and Human Services are also included in the appendix. (NRB)

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# PARENTAL KIDNAPING

## HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 1290

PARENTAL KIDNAPING

JUNE 24, 1980

**Serial No. 73**

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# PARENTAL KIDNAPING

## TUESDAY, JUNE 24, 1980

House of Representatives,
Subcommittee on Crime of the
Committee on the Judiciary,
*Washington, D.C.*

The subcommittee met at 1:33 p.m. in room 2237 of the Rayburn House Office Building, Hon. John Conyers (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Edwards, Gudger, Hyde, and Sensenbrenner.

Staff present: Hayden W. Gregory, counsel; Steven G. Raikin, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. Conyers. The subcommittee will come to order.

The Subcommittee on Crime begins hearings on the problem of "Parental Kidnaping." The subcommittee takes note of the fact that some estimated 25,000 children are abducted each year by the losing parent in violation of child custody and visitation court orders in the aftermath of divorce proceedings.

Parents are now exempted from criminal prosecution under the Federal kidnaping statute. When a parent kidnaps his child and takes him to another State, the second State is not bound by the child custody decree of the first State; and often the second State unwittingly encourages this kind of child snatching that has been the subject of increasing concern by the citizens, parents, and a number of organizations.

Thus, the subcommittee is very pleased to begin an inquiry into several pieces of legislation that have been introduced.

The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods and, in accordance with Committee Rule V(a), permission will be granted unless there is objection.

[No response.]

Mr. Conyers. Hearing no objection, such coverage is permitted.

The Chair is very pleased to welcome one of our distinguished Members of Congress from Florida, the Honorable Charles Bennett, a sponsor of H.R. 1290, one of the major pieces of legislation before us.

We welcome you before the subcommittee, and I incorporate your full printed remarks into these hearings.

[Statement of Hon. Charles Bennett follows:]

## PREPARED STATEMENT OF HON. CHARLES E. BENNETT

Mr. Chairman, I want to thank you for the opportunity to testify before your distinguished subcommittee on H.R. 1290, legislation which I have introduced to combat the problem of child snatching. As you know, Senator Wallop has introduced companion legislation in the Senate (S. 105, with 24 cosponsors), and I was the first Member of Congress to introduce child-snatching legislation back in 1973.

Child snatching is generally defined as concealing or restraining a child by one of its parents in violation of a custody decree or visitation rights of the other parent. Since child snatching is not now a Federal crime, the Justice Department does not compile statistics on how often this problem occurs. However, from estimates I have seen and from the mail I have received on the subject, I have every indication that child snatching is reaching epidemic proportions.

I am sure that there are few, if any, Members of Congress today who have not been contacted by a desperate constituent about a child snatching. Unfortunately, there is little a Congressman can do to help in these situations because child snatching is not now a Federal crime. Since Federal kidnapping statutes specifically exclude all parents from their jurisdiction, victimized parents usually cannot gain Federal help in locating their children.

The problem of child snatching was first brought to my attention by a constituent whose children had been abducted by her ex-husband in violation of a state court order. I would like to take a moment to chronicle the experiences of this woman to dramatize the frustration and heartbreak that accompany child snatching.

I will refer to the woman as Mrs. Smith. In the mid-1960's, Mrs. Smith divorced her husband and was granted custody of her three children by a Florida court. In April 1968, when the children were visiting their father in California, he covertly took them and moved to Colorado. Since child snatching is not a Federal crime, the FBI refused to enter the case. In 1969, Mrs. Smith located her children and got them back, but only after going to Colorado to file for custody in that state. Her ex-husband was granted visiting rights.

In June, 1970, the children were visiting their father in Colorado when he took them again and moved covertly to Washington state. The children were returned to their mother in November, 1971, but only after another exhausting legal battle.

But the story does not end there. On November 13, 1972, the father flew to Jacksonville, went to the children's school, took them and flew them to Seattle. Again, it was necessary for Mrs. Smith to locate her ex-husband and her children, go to that locale and fight to regain the custody of her children.

Believe it or not, Mrs. Smith is actually one of the lucky ones. Many victimized parents are never able to locate their children and never see them again.

It is ridiculous and improper for a parent to have to wage a separate custody battle in state after state because the other parent steals the children and moves to another state. It is tragic when the victimized parent cannot locate the abducted children and may never see them again.

In most cases I know of, it is costly to locate missing children. Private investigators do not come cheap. And once the children are located, the parent may have to travel to that locale and fight for custody in that state's courts.

And yet, it is not the parent who suffers most in child snatching cases; it is the children.

Most psychiatrists will tell you that after an emotional upheaval such as a divorce in the family, a child must have a stable and secure environment if he or she is to mature properly. However, the victim of a child snatching is often yanked from a stable environment and thrust into a whole new situation at a very delicate time in his or her development.

Such a traumatic experience can cause irreparable damage to a child's emotional stability.

In order to combat the growing problem of child snatching, I authored legislation in the 93rd Congress to make child snatching a Federal crime, thereby providing FBI help to victimized parents in locating their children. That bill would simply have removed the parental exemption clause from the Federal kidnapping statute.

In 1974, this subcommittee held hearings on my bill. I reintroduced the bill in the 94th Congress with one modification. I added a provision setting a ceiling for the penalty: a fine of not more than $1,000 or imprisonment for not more than one year, or both for the crime of child snatching.

Senator Wallop and I both introduced child snatching legislation at the beginning of the 96th Congress. H.R. 1290 and the companion bill in the Senate, S. 105, encompass the main points of previous legislation I have introduced on this subject. The substantive elements of H.R. 1290 are also included in H.R. 6915, the current Criminal Code Reform Bill.

As you know, H.R. 1290 has three main thrusts: First, the bill creates a new section to the U.S. Code entitled: "Full faith and credit given to child custody determinations."

This section requires states to enforce and not to modify custody and visitation orders of other states made consistently with a set of criteria from the Uniform Child Custody Jurisdiction Act. By providing for full faith and credit for other state's custody determinations, this section removes the motivation to snatch a child in order to shop for a favorable custody determination in another state.

The second part of the bill authorizes the use of the Parent Locator Service in the Department of Health and Human Services to locate parents who abduct their children in violation of the custody or visitation rights of the other parent. This section of the proposal provides an effective search mechanism and further reduces the need for FBI intervention.

Third, the bill sets criminal penalties for child snatching by creating a section in the United States Code entitled "Parental Kidnapping." This section makes it a crime to conceal a child for more than seven days in violation of a parent's right of custody or visitation or to restrain a child without good cause for more than 30 days. The former offense is punishable as a Class B misdemeanor (not more than 6 months, not more than $10,000 or both), and the latter offense is punishable as a Class C misdemeanor (not more than 30 days, not more that $10,000, or both).

This section also provides that the FBI "may not commence an investigation of an offense under this section unless sixty days have elapsed after both (A) a report is filed with local law enforcement authorities . . .; and (B) a request for assistance of the State parent locator service is made." This language seems to overcome the concern of the FBI that a Federal child snatching law would pull it into countless domestic disputes.

Finally, this section provides that it is a defense to a prosecution that a parent did not report a child snatching within 90 days, or that the abducted child was returned unharmed within 30 days of the issuance of an arrest warrant for the offending parent.

I think H.R. 1290 provides an effective interlocking framework for reducing the incidence of child snatching, helping victimized parents locate their children, and minimizing the involvement of the FBI to only those cases that really require the help of that agency. I strongly urge the subcommittee to support H.R. 1290.

## TESTIMONY OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE THIRD CONGRESSIONAL DISTRICT OF THE STATE OF FLORIDA

Mr. Bennett. Mr. Chairman, I want to thank you and the committee for allowing me to testify on behalf of H.R. 1290. legislation which I have introduced to combat the problem of child snatching. As you know, Senator Wallop has introduced companion legislation in the Senate, S. 105, and I was the first Member of Congress to introduce child-snatching legislation back in 1973.

Child snatching is generally defined as: "Concealing or restraining a child by one of its parents in violation of a custody decree or visitation rights of the other parent."

Since child snatching is not now a Federal crime, the Justice Department does not compile statistics, as far as I know, on this problem. However, from estimates I have seen and from mail I have received on the subject, I have every indication that child snatching is reaching epidemic proportions.

It is ridiculous and improper for a parent to have to wage a separate custody battle in State after State because the other parent steals the children and moves to another State. It is a tragic thing when the victimized parent cannot locate the abducted children, and may never see them again.

In most cases that I know of, it is a costly matter to locate missing children. Private investigators do not come cheaply. Once the children are located, the parent may have to travel to that locale and fight for the custody in the State's court there where there is no familiarity. And yet, it is not the parent who suffers most in child-snatching cases; in fact, it is the children.

Most psychiatrists will tell you that after an emotional upheaval such as divorce in a family, a child must have a stable and secure environment if he or she is to mature properly. However, the victim of a child snatching is often yanked from a stable environment, and thus thrust into a whole new situation at a very delicate time in his or her development.

Such a traumatic experience can cause irreparable damage to a child's emotional stability.

Senator Wallop and I both introduced child-snatching legislation at the beginning of the 96th Congress. H.R. 1290 and the companion bill in the Senate, S. 105, encompass the main points of previous legislation that I have introduced on this subject in previous Congresses. The substantive elements of H.R. 1290 are also included in H.R. 6915, the current criminal code reform bill.

As you know, H.R. 1290 has three main thrusts:

First, the bill creates a new section to the United State Code entitled "Full Faith and Credit Given to Child Custody Determinations." This section requires States to enforce and not to modify custody and visitation orders of other States made consistently with a set of criteria from the Uniform Child Custody Jurisdiction Act. By providing for full faith and credit for other States' custody determinations this section removes the motivation to snatch a child in order to shop for a favorable custody determination in another State.

The second part of the bill authorizes the use of the Parent Locator Service in the Department of Health and Human Services to locate parents who abduct their children in violation of the custody or visitation rights of the other parent. This section of the proposal provides an effective search mechanism and further reduces the need for FBI intervention.

Third, the bill sets criminal penalties for child snatching by creating a section in the United States Code entitled "Parental Kidnaping." This section makes it a crime to conceal a child for more than 7 days in violation of a parent's right of custody or visitation, or to restrain a child without good cause for more than 30 days. The former offense is punishable as a class B misdemeanor—not more than 6 months, nor more than $10,000, or both; and the latter offense is punishable by a class C misdemeanor—not more than 30 days, nor more than $10,000, or both.

This section also provides that the FBI, and I am quoting: "* * * may not commence an investigation of an offense under this section unless 60 days have elapsed after both (A) a report is filed with local law enforcement authorities * * *; and (B) a request for assistance of the State Parent Locator Service is made." This language seems to overcome the concern of the FBI that a Federal child snatching law would pull it into countless domestic disputes.

Finally, this section provides that it is a defense to a prosecution that a parent did not report a child snatching within 90 days, or that the abducted child was returned unharmed within 30 days of the issuance of an arrest warrant for the offending parent.

I think H.R. 1290 provides an effective interlocking framework for reducing the incidence of child snatching, helping victimized parents locate their children, and minimizing the involvement of the FBI to only those cases that really require the help of that agency. I strongly urge the subcommittee to support H.R. 1290.

I am a strong advocate of it. I think it is very much needed. As you know, I have been before your committee before. Maybe it was a good thing that there has been a postponement, because the bill that is before you now has had much input, and much thought, and it is a much better bill than I originally introduced—as is often the case, sometimes, that things are improved by waiting awhile—and I think it is now in an excellent condition, and I hope you can pass it.

Mr. **CONYERS**. Thank you very much. I appreciate your concern on this subject; but apparently you have felt that it is necessary to criminalize a conduct between spouses, or former spouses, at a Federal level for violating State court orders.

You realize of course that this would bring in the Federal Bureau of Investigation; it would bring in the whole Federal criminal legal process; and I am just wondering if you are ready to make marital differences, and all of the kinds of issues that are raised in connection therewith, such as whether one spouse has a suitable living arrangement; the "dirty linen" type questions that will become issues that even the FBI agent in the first instance will have to make some kind of judgment on to determine whether there was "concealment" or "detainment."

Would you speak to that, Charles?

Mr. **BENNETT**. Yes. Well, in the first place, if one person stole a pig from somebody else and took it across the Florida-Georgia line, it would be an FBI criminal offense right now under the law, or they took an automobile, or whatever of value, anything across State lines would be. So certainly this is a more important area. We will have to concede that it is a more important area.

The second point I would like to make is that it will not involve you in this type of domestic thing, because it is based upon court decrees. There are many people who have written me saying, "Well, it ought not to be based on court decrees or other situations where there is a necessity of coming in," and that is a good argument; but it fails to preserve against the very sort of thing you referred to.

This legislation is based upon where a court decree has been entered by the court which knew the parents, knew the children, knew the circumstances, and made a decision that was in the best interest of that child to be at a particular location.

Now those court decisions can be changed, but not by the Federal Government. They have to be changed by the State court. So it is not going to get you involved in these domestic matters like you referred to, because it is based on a State court decision.

Mr. **Conyers**. Would you be supportive of the notion that we examine the reason for the problem that has arisen—namely, spouses seeking other forms and jurisdictions to retry a problem of custody which has already been given in one State court?

Essentially, that frequently is the motivation. Could we not begin to regulate the rules—and you mentioned the Uniform Child Custody Jurisdiction Act that could be made more useful—so that judges in the second jurisdiction would not want to reward a spouse who has snatched? Essentially, it is a forum-shopping expedition in many of the cases. Do you think that we might be able to move in the area of the court processes among the several States, rather than start attaching criminal jurisdiction which might in these emotional circumstances be provocative to one spouse or the other?

Mr. **Bennett**. Well, let me say this to you: First of all, the bill does cover everything that you would suggest doing. It is just one section of this bill that has to do with criminalization, and the criminal pressure is not a high criminal pressure; it just allows the FBI to assist. And that is the reason why it is made a crime, to allow the FBI processes to be brought into the matter. That is the basic reason why it is there. I doubt if very many people would ever be convicted of such a crime.

Second, I want to say to you that although there undoubtedly is some incidence of people wanting to shop for another forum, in the first place there is no forum but the best forum because it is where the parents lived and where the child lived.

In the second place, really statistically there is very little foundation for thinking there are very many people who want to do that. Because if they did want to do it, they would have notified the other parent where the litigation was taking place, and they generally do not. In other words, generally these are real thefts, and they do everything they can to hide, No. 1; No. 2, they don't litigate. They generally do not litigate.

Mr. **Conyers**. Well, then, would you have the FBI expending time searching out places when the reporting spouse does not even know where the other spouse has taken the child?

Mr. **Bennett**. Well, the FBI cannot handle investigations of all kinds. This does not mean the FBI is going to be made into a tremendous institution that is going to do all these domestic things. It does not even do it right now. I doubt if an FBI inquiry would be made about the stealing of a pig that I referred to earlier. Under the law, they can; but I doubt if they ever do. They probably do not even run down all automobiles. They do not do everything that they have the power to do.

This is to give them the power to do it in a proper case so they could use it. Right now they do not have the power to enter in. They are not allowed to enter in. This will allow them to enter in.

There are a lot of safeguards here to protect the FBI from being overused—like the long lapse of time that has to occur; like notifying them promptly; and things of that type. My guess is that if this goes into effect it will not seriously require very much assistance there.

Mr. **Conyers**. Let me turn the questioning over to Mr. Hyde of Illinois.

Mr. **Hyde**. Thank you, Mr. Chairman.

I do want to compliment Mr. Bennett for this legislative initiative. I am a cosponsor of H.R. 1290. A "kidnaping" is still a "kidnaping," whether it is for profit or is part of a contested custody. Both cause great anguish and suffering. Furthermore, not everyone can afford a private detective—only the most affluent.

There almost always is an interstate aspect to these incidents, so I do think the legislation is very useful. But, Mr. Bennett, what is your feeling about including consent of the child as a defense, particularly where you have an older child? I know in guardianship proceedings in Illinois, the court takes into consideration the wishes of the child if he is over 14.

Mr. **Bennett**. I do not envision this being anything in the Federal court's handling at all. I envision that being just as it is now, a matter which would be considered by the court which fixed the custody in the first place, or which might amend it in the second place, and it would not be a Federal court; it would be a local court having jurisdiction over the domestic problems.

The consent of the child is often very important, but a judge might well—if you put yourself in the position of the judge—decide that some parents, because of prostitution, or because of heroin addiction, marihuana, gambling situation, whatever you might have, they might decide that maybe the child's decision as to where he should be should rest within the local State domestic court, as it is now, and that is where it will be after this bill passes.

Mr. **Hyde**. Many noncustodial parents kidnap their children because their visitation rights have been violated by the custodial parent. Would you make this a defense, a bar to prosecution, or perhaps a basis for reducing the penalty under sentencing guidelines?

Mr. **Bennett**. Well, I do not think really very many people are going to ever be convicted under this law. I think the big impact of this law is to allow the facilities of the FBI to be used.

What you have asked about I think is something that should be considered; but I doubt very seriously that any court is going to find anybody guilty of a crime under the circumstances that you outlined.

Mr. **Hyde**. Are there not special problems involved when the child is removed from the country, which could very easily happen, especially to Canada, Mexico, or Europe? Would you favor an amendment to your bill to suspend the 60-day waiting period before the FBI intervenes, if there is good reason to believe that the child is going to be taken out of the country?

Mr. **Bennett**. Yes; I would favor that.

Mr. **Hyde**. Thank you. I have no more questions.

Mr. **Conyers**. The Chair recognizes the gentleman from California, Mr. Edwards.

Mr. **Edwards**. Thank you, Mr. Chairman.

I compliment our colleague from Florida on his leadership in this important area, but I have no questions.

Mr. **Conyers**. Well, it looks like you've gotten off to a good start.

Mr. **Bennett**. Thank you, very much, sir.

Mr. **Conyers**. Thank you.

I notice our colleague from New York, Mr. Hamilton Fish, Jr., is present and has introduced legislation. He is a member of the Judiciary Committee, and we welcome him before the Subcommittee on Crime at this time, and incorporate fully his prepared remarks into the record.

[The full statement of Mr. Fish follows:]

### PREPARED STATEMENT OF HON. HAMILTON FISH, JR.

Mr. Chairman, I appreciate this opportunity to appear before this distinguished subcommittee and share my views with respect to legislation attempting to deal with the subject of parental kidnapping (or "child snatching"). I congratulate you, Mr. Chairman, for taking this initiative regarding what has become a growing and serious national scandal.

This issue was graphically brought to my attention in 1974, when one of my constitutents—Mrs. Gloria Yerkovitch of Lake Katrine, New York—was victimized. Her daughter, Joanna, was taken from her by her natural father. For over two and one-half years, my office worked with Federal and local officials in an attempt to help, but to no avail.

As a result of this case I began to explore the possibility of a legislative mechnism to deal with this problem. Ironically, I concluded that the principal problem here is a clause contained in the U.S. Constitution and how it is interpreted.

Article IV, section 1 of the U.S. Constitution states that "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State." However, the full faith and credit clause has been interpreted to apply only to final judgments and final orders issued in State courts. An order awarding the custody of a minor child is always subject to modification and adjustment in the State where it is issued. So, by its very nature, a custody order is not a final order and does not have to be afforded full faith and credit in the courts of other States.

The rationale behind the temporary nature of custody orders is that the Court should retain its flexibility, so that if circumstances change it will be in a position to protect the child's welfare. However this lack of finality causes obvious problems in custody disputes cases. Since a State court is not required by the full faith and credit clause to recognize the validity of an already existing custody order, issued in another State, there is absolutely no predictability in the outcome of these cases. Very often the parent awarded custody in the initial proceeding is unable to retain custody if the other parent takes the child to another State. This confused legal situation is an incentive for the noncustodial parent to abscond with the child.

Mr. Chairman, I fully understand that the bills that your Subcommittee will be considering today would all impose criminal penalties on a parental kidnapper. As serious as this problem is, I think it valid for one to raise the question whether or not criminal law is the appropriate mechanism to be used for the resolution of these inter-familial conflicts. Further, if parental kidnapping becomes a federal crime, a considerable additional work burden would be placed on the Federal Bureau of Investigation. It is my understanding that both the Department of Justice and the FBI have consistently opposed this approach. Certainly my personal experience has been that the FBI is unwilling to get involved in family matters.

As an alternative to the imposition of criminal penalties, I have introduced H.R. 325 which would give U.S. District Courts jurisdiction to enforce valid custody orders issued by state courts. Unfortunately, a jurisdictional conflict arises since my bill was not referred to the Subcommittee on Crime. Rather, it is now pending before the Subcommittee on Administrative Law and Governmental Relations. In the last Congress I wrote Administrative Law Subcommittee Chairman Danielson and urged that he schedule joint hearings with your Subcommittee on this important subject. I still feel that a comprehensive review of this problem is preferable to a fragmented approach. Perhaps, Mr. Chairman you could expand your hearings beyond bills proposing criminal penalties. At the very least, I would urge you to explore the possibility of some cooperative efforts with Chairman Danielson.

Since the Congress has two alternative approaches—one criminal and one civil—to deal with this situation, I wanted to take this opportunity to familiarize you how my proposal would work. My bill aims at getting around the problems caused by the fact that full faith and credit does not attach in child custody cases. That is, H.R. 325 would allow the Federal courts to be used as the mechanism for the enforcement of an existing, valid custody order. It would obviate the necessity of a parent, who has been granted custody, of going into the courts of another State in an effort to retrieve the child. Rather, the custodial parent will be able to utilize the nearest U.S. District Court. This method should be quicker and cheaper for the custodial parent. There would be no further problems caused by the lack of applicability of the full faith and credit clause. Furthermore, nationwide jurisdiction is automatically achieved over the "offending" parent and "process may be served in any State." Under the scheme of H.R. 325, U.S. Marshals will be brought in and utilized in the search to locate the "runaway parent" and missing child.

H.R. 325 would amend section 1332 of title 28, U.S. Code, dealing with the original jurisdiction of U.S. District Courts in diversity of citizenship situations. However, importantly, the minimum $10,000 amount in controversy usually required in diversity jurisdiction is not made applicable to custody cases. The remedies under H.R. 325 would be civil rather than criminal. The equitable powers available to the Federal courts (i.e. habeas corpus, injunctions, etc.) can be tapped, including "contempt" should the offending parent continue to disregard the terms of the initial custody decree being enforced by the Federal court. In short, H.R. 325 would provide a better chance of locating a child in a "snatching" or other "runaway" situation, and of obtaining court enforcement of a valid, outstanding custody order when the child ends up in another state.

Mr. Chairman and members of the Subcommittee, I do not presume to conclude that the imposition of criminal penalties on parental kidnappers are ill-advised or inappropriate. But, I do feel, that this Subcommittee ought to consider non-criminal legislative alternatives before taking final action in this area. Maybe a combination of the two approaches in one bill would work.

Again, I appreciate the opportunity to appear here today. I would be happy to try and answer any questions you may have. Thank you.

## TESTIMONY OF HON. HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS FROM THE 25TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Mr. Fish. Well, thank you very much, Mr. Chairman.

I appreciate this opportunity to appear before your distinguished subcommittee and to share my views with respect to legislation I have introduced, which is H.R. 325. I certainly congratulate the Chair for taking this initiative, because this has become a serious national scandal.

Mr. Chairman, this issue was brought to my attention graphically in 1974, when one of my constituents—Mrs. Gloria Yerkovitch of Lake Katrine, N.Y.—was victimized. Her infant daughter, Joanna, was taken from her by her natural father. For over 2½ years, my office worked with Federal and local officials, the White House, the FBI, and the Department of Justice, in an attempt to help, but to no avail.

As a result of this case, I began to explore the possibility of a legislative mechanism to deal with this problem. Ironically, I concluded that the principal problem here is a clause contained in the U.S. Constitution, and how that clause is interpreted.

Article IV, section 1 of the U.S. Constitution states that: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State." However, the full faith and credit clause has been interpreted to apply only to final judgments and final orders issued in State courts. And as the Chair knows, an order awarding the custody of a minor child is always subject to modification and adjustment in the State where it is issued; so, by its very nature, a custody order is not a "final order" and does not have to be afforded full faith and credit in the courts of another State.

Now the rationale behind the temporary nature of custody orders is that the court should retain its flexibility, so that if circumstances should change it would be in a position to protect the child's welfare.

But it is this very lack of finality that causes the obvious problem in custody dispute cases. Since the State court is not required by the full faith and credit clause to recognize the validity of already existing custody orders issued in another State, there is absolutely no predictability in the outcome of these cases.

Very often, the parent awarded custody in an initial proceeding is unable to retain custody if the other parent takes the child to another State. This confused legal situation is an incentive for the noncustodial parent to abscond with the child.

Mr. Chairman, I fully understand that the bills before your subcommittee will all impose criminal penalties on a parental kidnaper. As serious as this problem is, I think it valid for one to raise the question whether or not criminal law is indeed the appropriate mechanism to be used for the resolution of these interfamilial conflicts.

Further, if parental kidnaping becomes a Federal crime, a considerable additional work burden would be placed on the Federal Bureau of Investigation. It is my understanding that both the Department of Justice and the FBI have consistently opposed this approach, and certainly this has been my personal experience in talks with the FBI in the case that came to my office. They were unwilling to get involved in family matters.

As an alternative to the imposition of criminal penalties, I have introduced H.R. 325, which would give U.S. district courts jurisdiction to enforce valid custody orders issued by State courts.

Unfortunately, a jurisdictional conflict arises, since my bill was not referred to this subcommittee. Rather, it is pending before the Subcommittee on Administrative Law and Governmental Relations, also of the House Judiciary Committee.

During the last Congress, I wrote to Administrative Law Subcommittee Chairman Danielson and urged that he schedule, with your subcommittee, joint hearings on this important subject. I still feel that a comprehensive review of this problem is preferable to the present jurisdictional approach. And perhaps, Mr. Chairman, you would consider expanding your hearings beyond bills proposing criminal penalties. At the very least, I would urge you to explore the possibility of a cooperative effort.

Now, since the Congress has two alternative approaches—one criminal and one civil—to deal with this situation, I wanted to take this opportunity to familiarize you on how my proposal would work.

My bill aims at getting around the problems caused by the fact that the full faith and credit clause does not attach to child custody cases. That is, H.R. 325 would allow the Federal courts to be used as the mechanism for the enforcement of an existing, valid custody order.

It would obviate the necessity of a parent who has been granted custody of going into the courts of another State, or maybe several States, as she tracks down her child in an effort to retrieve that child. Rather, the custodial parent would be able to utilize the nearest U.S. district court. This method should be quicker and cheaper for the custodial parent. There would be no further problems caused by the lack of applicability of the full faith and credit clause; nationwide jurisdiction is automatically achieved over the "offending" parent; and "process may be served in any State."

Under the scheme of H.R. 325, U.S. marshals would be brought in and utilized in the search to locate the "runaway parent" and missing child.

H.R. 325 would amend section 1332 of title 28, United States Code, dealing with the original jurisdiction of U.S. district courts in diversity of citizenship situations. The minimum $10,000 amount in controversy usually required in such diversity jurisdiction is not made applicable in custody cases.

The remedies under my bill would be civil rather than criminal. The equitable powers available to the Federal courts—whether they be habeas corpus, injunctions—can be tapped, including that of contempt, should the offending parent continue to disregard the terms of the initial custody decree being enforced by the Federal court.

Mr. Chairman and members of this subcommittee, I do not presume to conclude that the imposition of criminal penalties on parental kidnapers are ill-advised or inappropriate. I do recognize that they present problems for you. I feel that this subcommittee ought to consider noncriminal legislative alternatives before taking any final action.

It is not inconceivable, Mr. Chairman, that there could be a structure of alternative remedies available in one piece of legislation.

I appreciate the opportunity to appear here with you today, and I will be happy to try to answer any questions.

Mr. CONYERS. Well, you raise a unique approach that I think the subcommittee has to consider, but right now we have, as you know, pending votes. I would appreciate it if you could return for questions, and then the subcommittee would stand in recess until the end of the two votes that are now pending.

Mr. FISH. I would be happy to. Thank you very much.

Mr. CONYERS. The subcommittee stands in recess.

[Recess.]

Mr. CONYERS. The subcommittee will come to order.

We have just concluded with the testimony of our colleague, Mr. Fish of New York, and we are now open for questions.

I might ask my colleague whether or not the thrust of his legislation is to seek a solution that minimizes Federal involvement and avoids criminalizing the conduct that is the subject of these hearings?

Mr. FISH. That is correct, Mr. Chairman.

Mr. CONYERS. And would you not take the Uniform Child Custody and Jurisdiction Act and in effect implement it at the Federal level, perhaps for such time until all of the several States have decided to enact it?

Mr. FISH. Mr. Chairman, that is precisely the thrust of my approach—which is, to federalize the Uniform Child Custody and Jurisdiction Act. It may well be possible to condition the life of the legislation, such as a sunset provision, on the adoption of the uniform law by all the several States, which would have the same effect.

Mr. CONYERS. And what happens in the Uniform Child Custody and Jurisdiction Act, as I recall, is that it provides a basis for establishing jurisdiction and so imposes some order in terms of the forum-seeking aspect to these custody cases.

Mr. Fish. Jurisdiction does seem to be the thread that goes through all these heart-rending cases that have come to the Members' attention over the years, where jurisdiction is so difficult to establish, to attach in any place in the country.

Mr. Conyers. Are there any reports from any of the agencies in support of your legislation?

Mr. Fish. Mr. Chairman, the subcommittee chaired by our distinguished colleague, Mr. Danielson, asked the "HEW," at that time, and the Department of Justice, for reports.

The Department of Justice has not responded. Patricia Harris, the Secretary of HEW, did respond as follows:

> Dear Mr. Chairman: This is in response to your request for a report on H.R. 325, a bill to amend section 1332 of title 28 of the United States Code to grant jurisdiction to district courts to enforce any custody order.
>
> The above-captioned bill has no substantial effect upon the programs administered by this Department. We therefore defer to the views of other Federal agencies more directly concerned. We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the administration's program.

That is the only report that we have received back.

Mr. Conyers. The Department of Justice made no response?

Mr. Fish. Has not responded to date.

Mr. Conyers. Let me ask you: Would it not be possible to argue that with your approach we might actually invite forum-shopping on the part of a spouse who has removed the child?

Actually, Mr. Bennett would impose the obligation on State courts, and you would require the Federal courts to give full faith and credit to the decision.

Would a spouse under such law take the child, and then move into a Federal court, and then, so to speak, "get the first jump" in the proceeding? Is that a possibility?

Mr. Fish. Well, that is certainly not the intention, no. It is the custodial parent who would initiate the Federal court proceeding.

To carry it one step further, let us say that the—I had a very interesting conversation with Mr. Gudger on this, and I think it is something that should be explored more fully. What if the parent who takes the child from the parent with custody into another jurisdiction, another State, and proceeds to get custody? So that you have two valid custody agreements.

Well, my bill on its face says that the Federal court should enforce the existing custody agreement, and what I mean there is the first custody agreement, the valid custody agreement. I think that this situation might be met by such devices as insisting that in the event the custody is sought in another jurisdiction by the parent with control over the child, that notice would have to be given to the other parent. That would bring the matter to the attention of the custodial parent as to the whereabouts of the child; it might head off a second custody decision; and it might speed up the attachment of jurisdiction in the Federal courts.

Mr. Conyers. I would like to recognize Mr. Gudger of North Carolina to continue this inquiry.

Mr. Gudger. Thank you, Mr. Chairman.

I want to commend the gentleman from New York for this very important bill, and for his very capable and thorough explanation of it.

Addressing ourselves to the law as it exists now, most States I believe presently by case law or by statute would deny jurisdiction to entertain a custody application made by the noncustodial parent who has left a State where an award has been given to the custodial parent unless the State from which the child was removed would have allowed a modification upon change of circumstances on the application of the noncustodial parent.

In other words, if New York State had a rule whereby upon a change of condition the unsuccessful parent in the original proceeding could come into the court and move for modification of the custody order, and for a change in his rights of custody, or for her rights of custody, then the State to which that child is removed by the noncustodial parent could grant jurisdiction if the child was retained there for some reasonable period of time.

Now, as an attorney I have been in that situation on occasions. I realize that your bill speaks to that, but I am not sure that it would effectively cause all States which have this jurisdictional policy to abandon it.

Now you and I during the recent interim were talking about the fact that if we are going to say that the Federal court may have and assert jurisdiction in the State of asylum, the State to which the noncustodial parent has removed the child, that the custodial parent can come into that Federal court in that State and apply for its help. If the noncustodial parent has retreated with the child to that State of asylum, we will say, and has there held the child for 6 months in secrecy, and then goes into the courts of [illegible] State and files an application for custody of the child—saying that there has been a change of circumstance, the child is now in school in this new community; that he, the husband, has an established business there; that the best interest of the child requires that he, the husband who has absconded with the child from New York, now has custody of the child under the order of the asylum State.

Why could we not create a right of removal in the custodial parent to go into the State court and lift that jurisdiction and bring it over to the Federal court?

Mr. CONYERS. Would you like that question repeated? [Laughter.]

Mr. FISH. No. I know the problem. As I said——

Mr. GUDGER. Having stated it to you earlier, do you see it in context appropriately here expressed? I do not know, maybe I have confounded the issue.

Mr. FISH. It certainly is a matter that should be explored carefully by the subcommittee and by the counsel for the subcommittee, because whereas the legislation itself says that the custody order should be enforced—and I am assuming it is the first custody order—that if there is any ambiguity here, we want to reach the problem that you just addressed.

Mr. CONYERS. Would the gentleman yield to me?

Mr. GUDGER. I will be happy to yield—If I may state the problem again in a little bit closer context. I dealt with this situation on at least five different occasions, where a parent would get a custody order in say New York, your State. The other parent would then come in and abscond with the child, kidnap the child, and remove the child say to North Carolina, my State. And there, after a period of time, come into the courts of my State—usually a district court, a fairly inferior court level—and apply for custody of the child, and get an order there; or maybe not get an order there, because the laws of our State would require that notice be given to the other parent.

Well, I think we would have to address that situation where, if that notice did not in fact reach the other parent in time for that parent to interfere and remove him to the Federal court, then at least the order could be later vacated and such a removal ordered.

My problem is that when that second court has acted, the sanctity of its decree is of almost equal dignity as the sanctity of the original court.

Mr. Fish. There is no question about it, Mr. Gudger, this is a problem. And if the noncustodial parent acts first, it is going to be a worse problem. I think it should be met and addressed in this legislation.

Mr. **Conyers.** Could I just interject, the difference between the Bennett proposal and yours: You would have, enforcing the full faith and credit provision, the parties removed to a Federal court. Under the Bennett provision, his bill would impose the full faith and credit enforcement on the State court.

It seems to me that that is a very important difference. The Federal jurisdiction, could it not, Mr. Fish, result in the Federal court litigating between two State court decrees; whereas, in an alternate method previously suggested, we would be imposing the responsibility of the enforcement upon the State court, and thereby reducing, it seems to me, the amount of litigation.

Do you see any possible merit in leaving the enforcement at the State level, rather than introducing the Federal judiciary?

Mr. **Fish.** Well, I really think that it is easier on the parent that has custody of the child to go to the nearest Federal district court—which in some cases will be one stop, and just a few hours' distance—and have jurisdiction attached nationally, than it would be have to even discover which other State to go into.

Mr. **Conyers.** Of course you know that the Federal courts have no experience in these kinds of matters, and they would be moving into this other area. I am just thinking of the fact that they have "speedy trial" considerations, antitrust, organized crime, the RICO statute, bankruptcy matters, and here on the average of a 21-month docket you would now be imposing custody matters which it seems might be handled in the courts that normally handle that, especially if we were going to implement the Uniform Child Custody and Jurisdiction Act, which I think is salutary.

Mr. **Fish.** Well, I am not going to presume to tell this committee which authored the Speedy Trial Act—and I served on the subcommittee with the chairman for a couple of years, and I am fully aware that this does present a problem that we cannot duck; that it will add a burden to the Federal court system.

As far as the experience or lack of experience of the court, however, I would suggest that under *Erie* v. *Tompkins*, the State law will be applied by the Federal court. So I do not think that any unique expertise is necessary.

Mr. **Conyers.** The Chair recognizes Mr. Sensenbrenner from Wisconsin.

Mr. Sensenbrenner. Thank you, Mr. Chairman.

As you know, Mr. Fish, I am also a cosponsor of Mr. Bennett's bill H.R. 1290. Your alternative is an interesting one which may expand the jurisdiction of the Federal district courts into family law perhaps for the first time in history.

My basic question is this: Do you feel the problem is the lack of court enforcement of existing custody orders, or is it a failure to locate the abducting parent, because the facilities of the Federal Bureau of Investigation and the Social Security Administration's Parent Location Service are generally unavailable, and the Internal Revenue Service records are unavailable under the Privacy Act?

Mr. Fish. Mr. Sensenbrenner, I would have to say it was both those, from the experience of actual cases that come to my office, as well as the cases I have heard about from other colleagues' offices as soon as I sent out a "dear colleague" letter on my bill.

As I said in my initial statement, the fact that full faith and credit is not given is one problem. Obviously this does not even get reached until you can locate the child and the absconding parent. That remains a problem under any vehicle, it seems to me, of approach to this legislation. It is my judgment that once Federal jurisdiction attaches, that it is national; that the U.S. marshals are available to—I do not expect them to be out hunting for people, but to follow up on leads that would otherwise not be possible for a person of modest means to pursue.

I know in the principal case in my office, the frustrating and sad aspect of it was that leads kept coming up in different parts of the country—stories about a child who was similar to the child in question—and so my constituent spent a lot of time, and a lot of money, and a lot of heartache to no avail because of the difficulty in trying to track down all of these leads.

I would submit that perhaps, had there been Federal jurisdiction, the Federal marshal could have acted very promptly in ascertaining whether or not the lead had any merit.

Mr. Sensenbrenner. But, if the custodial parent cannot locate either the child or the abducting parent, how could either your bill, which gives the Federal court jurisdiction, or the present Uniform Child Custody Jurisdiction Act, that has been adopted by 44 of the 50 States, I believe, really help in solving this problem?

In short, if you cannot find the child, how can court proceedings be effective?

Mr. Fish. Well, these approaches, whether they be the uniform approach, your approach, or my bill, does not get to that issue.

I mean, the child could be abroad, today probably more likely than in past years, as we do not have any effective departure control in the United States, as you know. But it just facilitates an action by the custodial parent if the child is located, under any approach.

Mr. Sensenbrenner. I yield back the balance of my time.

Mr. Conyers. Are there any further questions?

[No response.]

Mr. Conyers. We want to thank you for presenting this unique approach. It will be examined carefully and exhaustively by your former subcommittee.

Mr. **Fish.** Thank you very much.

Mr. **Conyers.** I would like to call a panel of witnesses next: Mr. Arnold Miller, accompanied by Ms. Rae Gummel; Mrs. Sandra Coleman; and Mrs. Marolyn Armstrong. Mr. Miller is president of the Children's Rights Inc., a nonprofit organization, and the only organization of national scope addressing this problem of child snatching. His expertise comes from his own experience. Ms. Rae Gummel is vice president of Children's Rights, and has been actively working with parents. Mrs. Sandra Coleman is a parent of a kidnaped child.

I yield to my colleague, Mr. Edwards of California, to have the honor of introducing his constituent.

Mr. **Edwards.** Thank you very much, Mr. Chairman.

Mr. Chairman, Mrs. Marolyn Armstrong is a parent from Union City, Calif., whose child was kidnaped October 22, 1976. She is also a constituent of mine. She was able to enlist the assistance of the FBI in locating her child in May 1980, and earlier this month her former spouse pleaded guilty to State parental kidnaping charges, and was sentenced to 5 years' probation and 6 months in the county jail. He was also ordered by the California Superior Court to make restitution to Mrs. Armstrong of $28,000. Mrs. Armstrong serves on the Board of Governors of Stolen Children Information Exchange, Inc., a California-based nonprofit organization devoted to the exchange of information to assist parents and children in kidnaping cases. We welcome you.

## TESTIMONY OF SANDRA COLEMAN, A PARENT OF A KIDNAPED CHILD, MYRTLE BEACH, S.C.; MAROLYN ARMSTRONG, A PARENT OF A KIDNAPED CHILD, UNION CITY, CALIF., ACCOMPANIED BY ROBERT HUTCHINS, ALAMEDA COUNTY DEPUTY DISTRICT ATTORNEY; AND ARNOLD MILLER, PRESIDENT, CHILDREN'S RIGHTS, INC., ACCOMPANIED BY RAE GUMMEL, VICE PRESIDENT, CHILDREN'S RIGHTS, INC.

Mrs. **Armstrong.** Thank you, very much.

Mr. **Conyers.** We are glad that all of you were able to join us today. We know of your continuing concern, and we would like to hear from you in your own way. You may begin. Mrs. Coleman, would you like to start?

Mrs. **Coleman.** Yes, sir.

I am a custodial parent of a child who was kidnaped October 4, 1977. We have spent in excess of $30,000, and today we are no closer——

Mr. **Conyers.** You have spent that amount of money in attempting to retrieve your child?

Mrs. **Coleman.** Yes, sir, through private investigators, through travel expenses, through investigating school boards, and through government departments from one State to another. This happened in the State of South Carolina, and we have yet to be any closer today than we were 3 years ago.

Mr. **Conyers.** Do you know where the parent and your child are located? Or have you known at any time during this 3-year period?

Mrs. **Coleman.** No, sir. He was abducted out of a public school in

Anderson, S.C., through very malicious methods. It was very well planned to snatch my child. We feel like he is in the State of North Carolina, but we have no idea. The only reason we assume that, is because that is where his parents are, and that is where his residence was at the time of the snatch.

Mr. Conyers. What recommendations would you have to this subcommittee in considering this legislation before us?

Mr. Coleman. We have been through State, local, and Federal agencies to get some help. We have so far had every door shut on us. They say, again, and again, there is not a law on this of any sort. We were able to get a felony warrant issued against my ex-husband, but as yet we have seen the felony warrant not worth the paper it is written on. Nobody has recognized it.

Mr. Conyers. The problem is, you do not know where he is to take any type of action.

Mrs. Coleman. Right. We feel like he has changed names. We have been through every department of records we can go through. So, with the problem of taking a new identity, it has created problems for us that I do not know if this subcommittee has considered.

So many people say, once you find them, then we are going to do this, and we are going to do that. But you have got a person with a new identity, and how do we find them? And we need some sort of help from the Government, some sort of Federal intervention—of some kind—and so far, we have not had any.

At present, we have nowhere else to turn for help. We have been through everything we can go through.

Mr. Conyers. Thank you very much.

Mrs. Coleman. Thank you.

Mr. Conyers. Who would like to proceed next?

Mr. Miller. Thank you, Mr. Chairman.

Children's Rights, Incorporated, would like to thank the subcommittee for allowing us to testify today. We are here to speak on very serious issues which we consider to be among this Nation's most significant social phenomena—that is child snatching and child restraint.

"Child snatching" is a situation in which a parent abducts and crosses State lines with his or her own child, and conceals that child. Under current Federal law, this is not a crime.

We have cases of children taken at gunpoint, and under similar violent circumstances. There are still no clues as to those children's whereabouts. We do know that the few children who are brought back or found are psychologically damaged. It is not uncommon for parents to spend $15,000 or $20,000 in trying to locate their missing children.

The biggest element in child snatching which we would like to stress to the subcommittee is concealment. This is an area in which we feel that Federal help is desperately needed. Let me clarify the differences between child snatching and child restraint.

Child snatching involves the element of abduction and concealment, and almost without fail it involves taking the child across State lines. The jurisdiction from which the child was taken has no way of locating that missing child. As long as the element of concealment is in action, we feel that a crime has been committed against the child.

Child restraint, on the other hand, involves a child being taken or sent out of State with the understanding that he will visit for a specified period of time and then be returned. If, after that period of time is ended, the child is held by his parent, there is still no way of bringing the child back to the original jurisdiction.

This situation is compounded by the fact that the orders of one jurisdiction often are not enforced by a sister State. Both child snatching and child restraint are abusive. It is imperative that Congress protect our children from these actions.

We are asking for Federal legislation to help the citizens of this country locate their missing children, so that domestic issues such as custody can be settled by the local courts.

It is very important that this subcommittee understand that we do not want to involve the Federal Government in domestic issues. Custody, visitation, support, et cetera, are domestic determinations and we feel such determinations should be left to the family courts. But in order to make such determinations, or to make those determinations relevant, we must get all parties back into the original jurisdiction.

Thus, there are three basic considerations which we feel must be included in any legislation which purports to address the problems of child snatching and child restraint.

First, it is imperative that custody, visitation, and access be given full faith and credit by the sister State. That element has been included in H.R. 1290.

The second element needed is a mandate for the Federal Parent Locator Service to use available files for initial investigative purposes. This would take considerable pressure off the Justice Department, and will establish whether or not the child has been in fact abducted or restrained as claimed. I am amazed that the Parent Locator Service will find the dollar, but not the child.

The locator service element has been included in H.R. 1290.

Third, we feel that the traumas inflicted on families and children by these acts, together with their interstate nature, make it imperative that such actions be made crimes at the Federal level. This final element has also been included in H.R. 1290.

In testimony before the House Subcommittee on Criminal Justice on March 6, 1978, in testimony before the Senate Subcommittee on Criminal Justice on January 30, 1980, and again here today, we stress the need for a fair and viable national solution to the child-snatching problem.

1979 was the International Year of the Child. Much fanfare surrounded the studies, activities, and goals of that worthwhile effort. But we find it odd that ours, the Nation claiming most loudly to protect the weak and innocent, our Nation has failed to protect her own children from the severe trauma and emotional upheaval inherent in child snatching. Thousands of parents have focused hopeful eyes on this hearing—not a few of them from North Carolina, Wisconsin, Illinois, Michigan, Ohio, Missouri, California, and Oklahoma—and we hope that this time Congress will not fail our children.

Mr. Conyers. Thank you very much.

Mr. Miller. I would like to break from my oral statement and add an additional statement, if I may.

As I heard the speakers prior to myself, it seems like there is a lot of discussion about custody. One of the basic issues that Children's Rights has always talked about has been the fact that child snatching really is not a custody issue. It is borne out of domestic problems in the family, but the resolution of the custody problem we think should be left to the local courts.

When we are talking about jurisdictional problems, we are talking about State to State, obviously; and upon our records of the thousands of letters that we get, we are talking about 70 percent of the snatches that occur, occur prior to a court determination. That means that at the date, on the day that the child is taken, no court really has jurisdiction over the child.

So if you are going to include and make it part of the Federal law that we are only going to look at a case of a stolen child who has had a prior court determination made on him, we are leaving out the vast majority of the parents who actually have their children taken.

Mr. Conyers. That is very interesting, because I think you may have introduced a new dimension—the problem of snatchings that occur before a court determination has been made. I am pleased to hear this percentage. We were trying to determine how many——

Mr. Sensenbrenner. Would the gentleman yield at this point?

Mr. Conyers. Certainly.

Mr. Sensenbrenner. I would like to have the staff do some research on what the divorce procedures are in the 50 States. I know that in my own State of Wisconsin, for instance, there is a temporary hearing held before a family court commissioner almost immediately following service of process. Then, a temporary order on issues such as alimony, child support, and custody is issued that is effective prior to the time the case actually goes to trial. I wonder what the procedure is in the other States, because if they follow Wisconsin's procedure, there would be an enforceable order almost from the time the divorce papers were served on the defendant.

Mr. Conyers. We have a Library of Congress, Congressional Research document that I think will have some bearing on it, but I think he is referring to the matters even before there are any preliminary hearings.

Let us hear from Mrs. Armstrong, now.

Mrs. Armstrong. Thank you very much, Mr. Chairman.

Mr. Conyers. You are welcome.

Mrs. Armstrong. I would like to say that my daughter was taken on October 22, 1979, so she actually was gone approximately 7 months.

There are not any reliable statistics available, although we do believe that some 25,000 to 100,000 children are taken per year. My daughter became one of those statistics, not once but twice.

Last September, my former husband came and took her for the first time and, through intimidation and through my threatening him with everyone from the FBI to personal harm, he returned my child within 24 hours.

I went to the local court and asked for a temporary restraining order prohibiting him from taking her on visitation again until the matter could be resolved, and was denied that order. Some 2 weeks later, he came and took her forcibly from my babysitter, while I was out to lunch at my office and it could not be confirmed whether he was to pick her up or not.

Mary Elizabeth was taken on October 22, 1979, and I did not hear one word about this 2¼-year-old child for 6½ months. My former husband is a victim of alcoholism and drug abuse. He had been in some five or six psychiatric hospitals ranging from Saint Helena's in Deer Park, Calif., to the ASSIST drug rehabilitation program in Alameda, Calif. Discharged from the service with a mental disorder, he had continued through life very insecure.

A very interesting element about this, Mr. Chairman, is that my former husband, who committed this crime against my child, as a youngster was a victim of child abandonment. It is a continuing process.

Although Mary Elizabeth was 2½ when she was taken and I didn't know where she was all this time, I tried every possible means that I could to find her. I enlisted the help of the local police department first at the Union City Police Department, and we obtained a felony warrant under 278, and the hunt was then on.

Alameda County district attorney's office, and Mr. Hutchins, who is here with me this afternoon, proceeded to instruct the local authorities to continue their hunt. Because of the psychological and emotional and mental background of Mr. Johnson, I contacted the FBI, and they really told me that there was nothing that they could do.

I contacted them again, talked to an investigative officer—excuse me, I think they are called "Investigator Agents"—and he informed me that he thought that just perhaps I did meet the elements for an "unlawful flight to avoid prosecution" warrant.

As a result of that, he referred to me Mr. Hunter, who is the U.S. attorney in San Francisco. I did contact Mr. Hunter, and Mr. Hunter recommended to the Justice Department here in Washington that because of the severe psychological background, and drug abuse, and alcoholism background of my former husband, that the FBI indeed become involved.

On or about March 10, I came to Washington, D.C., and I talked with Mr. Adams of the Justice Department, and I was fortunate enough to be able to convince him that my child was in danger, that my former husband had in fact left the State of California, and Mr. Hutchins assured them that he would extradite him immediately at the expense of the State of California and Alameda County.

Meeting all those elements of the FBI was not easy, and in my particular case it was true; it was a fact; and it was necessary. We had a 2¼-year-old out there who was endangered.

Mr. CONYERS. Did the authorities know where he was at the time?

Mrs. ARMSTRONG. No, sir. We had no idea in the world where he was. He had been sighted in December near his parents' home in Colorado, and his mother told me that he called occasionally and told her that the baby was "just fine." His "just fines" and my "just fines" are not the same, sir, so I was not convinced that she was all right.

Mr. EDWARDS. How did the FBI find him?

Mrs. ARMSTRONG. The FBI began doing field office investigations. Agent Polazio [phonetic] in San Francisco directed several field offices to make several phone calls and go out and interview people, which they did. They became actively involved in the case in March.

As a result of them becoming involved, he abandoned his vehicle in southern California, and a search of that vehicle revealed a lot. There were drugs, some matchbook covers, and things like that. The car was gone over by the FBI crime lab.

Then on April 28, as a result of the FBI and other agencies investigating and talking to people, I received an anonymous phone call from southern California telling me that my former husband and my daughter had been frequently seen in a restaurant, which I was familiar with, in Sepulveda, Calif.

I called the FBI and the local authorities, and because they could not act fast enough for me—it was Friday evening—I hired a private investigator, and 12 days and $28,000 later, my daughter was recovered.

Mr. **Edwards**. Is it your testimony that it is necessary for the Federal police, the FBI, to be involved in these cases?

Mrs. **Armstrong**. It is my testimony, Mr. Edwards, that there are definitely cases where it is absolutely necessary. We are not just dealing with a custody matter; we are dealing with endangered children, in many instances. My particular case perhaps is somewhat unique, in that my child was endangered; but it is not unique in that the facilities that were available to me because she was endangered worked in 53 days.

Mr. **Conyers**. Mrs. Coleman, did you try to get the FBI involved in your case?

Mrs. **Coleman**. Yes, sir; I did. I went to the FBI to see Mr. Ike Lee in Columbia, S.C. He said "if" my child's life was in danger, if there was a medical reason, that possibly he could issue a UFAP warrant. We had a doctor write a statement that my son has a severe allergy; that if he is not treated with certain medication, it could become life-endangering.

Several days later we got back with him, and he said he had talked with someone with the Justice Department and they turned it down. We went again to Charlotte, N.C., which is where my former husband was living prior to the abduction, and went to the FBI to speak with an agent, and again we had the same response. There was nothing they could do; that it is going to have to be considered a little more life endangering than it is—which I cannot see a difference as a mother; he could die from this allergy as easily as from an automobile accident, or a heart attack, or some potential illness.

Mr. **Conyers**. Did you want to conclude your testimony, Mrs. Armstrong, before we have questions from all of my colleagues? Or were you finished?

Mrs. **Armstrong**. In closing, I would like to say that in my particular case, we were dealing with a lot of elements that exist in all cases, and that is the fact that my former husband was a very sick person, and still is, is very important to remember.

I think in these cases where people come to the FBI and have a situation where there is really a sick child, and/or a sick parent involved—this was not an act of love for my child; this was an act of hostility toward me. I recognize that. This is his way of getting back at me for remarrying; this is his way of getting back at me for all the "horrendous things" that I had done to him in the past; it was not out of love for the child. They never are.

And if the child is not loved in that manner, then the child is endangered, in any event. I think it is really important to recognize that there are specific cases, but they are all kidnapings. Just because a child is held for hostility reasons does not make it any different from ransom. It is the same kind; it is just the monetary exchange that is different.

Mr. **Conyers.** Thank you very much. Your child is still missing?

Mrs. **Armstrong.** No; my child was recovered by the FBI.

Mr. **Conyers.** Your child has been recovered?

Mrs. **Armstrong.** Yes, on May the 7th.

Mr. **Conyers.** I know we are all very glad to hear that.

Mrs. **Armstrong.** Thank you.

Mr. **Conyers.** Ms. Gummel, would you care to make a statement?

Ms. **Gummel.** Yes, I would. I certainly agree with Mrs. Armstrong that in her particular case she was very fortunate to be able to prove that her child could very well be in danger. A problem that most of our parents of course have is that they do not know where the child is, and they cannot prove that their child is in a particular danger at a particular time.

One case that constantly comes to mind when people say, "Well, the child is OK because they are with their mother or father," is a case of another woman in California, Nina Yoder-Vigil, whose daughter was taken at the age of 7, last year, and was found in a hospital in Alabama and had to have emergency brain surgery and other surgery, part of which left her possibly never to walk again—and this is a 7-year-old child—as a result of beatings given her by her father and stepmother. Needless to say, Mrs. Vigil did not know that her child was being abused at the time she was looking for her; she just knew she was missing.

I do not think there is anyone who would want to imagine that a child is OK when you do not know where that child is. I think we have to assume that there is a possibility for harm to these children until we can locate them.

Mr. **Conyers.** Well, I want to thank all of you on the panel. You have very clearly demonstrated the problem, and now let us see if we can search out some of the solutions.

The first thing I am struck with is that if 70 percent of the snatchings occur before there are any legal proceedings, then this raises a mammoth problem of initial investigation and discovery. Because what we are here to try to fashion is a remedy nationally for searching for the abductor-spouse and the child.

Am I hearing you correctly that you are prepared to authorize the Federal Bureau of Investigation to now turn to investigating some 25,000 child snatching cases a year? I shudder to think how many additional FBI agents may be required.

Let us talk about that initial problem and how you would s[illegible]at resolved.

Mr. **Miller.** I will comment on that.

The intent of H.R. 1290 is to take the first thrust, investigative thrust, through the Parent Locator Service. We are giving a period of time for the PLS to locate the missing child. Depending on whether it is restraint, or depending on whether it is really concealment, the time differs. But that is the initial approach.

The FBI is not being called in right from the start, and we do not want the FBI in. The idea that FBI agents are going to be running down parents we would like to get away from, because that is not the case.

We are only turning to the Justice Department and the FBI after HEW has done an exhaustive search and the child cannot be found and it looks like we do need additional help.

Mr. CONYERS. But you would put the Parent Locator Service to work before there are any proceedings instituted between the spouses? Is that correct?

Mr. MILLER. Absolutely, because of the comment that I made earlier. The issue is not based upon which State, or which jurisdiction, for example, has or should have the right to hear the case of the child. What we have here is a missing kid. We have abducted children. Now the fact that the parent took the child is no reason to excuse the issue, which is what the Lindbergh law currently states.

Mr. CONYERS. Well, are you opposed to that?

Mr. MILLER. To which?

Mr. CONYERS. To the exception made by the Federal law on this subject.

Mr. MILLER. Yes. If I could, I would just take the exception out, because I know how it got in.

Mr. CONYERS. But would you prefer to do that? I mean, that is an alternative that this committee can appropriately consider.

Mr. MILLER. Based upon the social issues that we have today, I think it better if we take the current bill that is before the committee, because it addresses other things besides just the exclusion statement out of the Lindbergh law. But the concept is still there.

We are addressing the overall issue of the fact that it is wrong for anybody—parent or otherwise—to conceal a kid.

Mr. CONYERS. Well, would you prefer, if you used the locator service, to take out those confidential matters that are currently in it and provide an objection to the various departments for their fuller utility, as you recommend? Doubtless you are aware that the IRS material is in the locator service and certain social security information. Would you prefer that to be in, and run a chance of violation or invasion of privacy? Or would you prefer to take that out and expand the use of the service?

Mr. MILLER. The very elements that you are raising now are being used to find the back-child-support payments. The PLS does not really care about bringing dad back into the original jurisdiction as long as they can garnish his salary and bring the money back. That is being done now.

My point is that the PLS is already in place. It is set. We are in favor of enlarging its responsibility to include not only the financial responsibilities, but also the child.

Mr. CONYERS. Would you not enlarge the number of persons and agencies that would be making use of the Parent Locator Service at the same time that you enlarge its responsibilities, and thereby run the risk that is complained of by them?

Mr. MILLER. I am sure, as we enlarge its responsibilities, we are going to enlarge somewhere down the line, of course. I do not know where the breakoff point would be.

Now we are still talking about one agency. I think you mentioned: Are we going to enlarge other agencies? I am not so sure that we are. I am sure that a few of them would come under this new law, but I am not too sure that that many of them would.

I kind of agree with Congressman Bennett's earlier comments that it would probably be very rare that a parent would be convicted under the Federal law. The situation that occurs now is that a parent will go to his attorney and say, "I have had it up to the eyebrows with my ex-wife; I cannot stand it. What do I do? Can I just leave and take the kid?"

Right now, the attorneys all across the country serving their clients will tell them, "Nothing will happen to you. Go ahead and take the kid and run." It is very difficult to get an attorney to admit to that advice, but it is advice that is being given nationwide.

What this bill would give us and the parents and the kids would mean that the attorney would be able to say, "You cannot go because it is against the law."

Mr. CONYERS. Mrs. Armstrong?

Mrs. ARMSTRONG. Why are we trying to enact a Federal law if we are not going to make it a crime? I have never heard of any defenses to prosecution like there are in this bill, for instance.

You can take a child and it can be gone for 30 days, and if you bring that child back, then suddenly it is not "kidnaping." So are we to assume that every 29½ days that child can be taken and returned on the 30th day, and every 31st day that child can be taken again and we have a yo-yo here?

Mr. Hutchins is here with me. He is from the Alameda County District Attorney's Office. He has a lot of thoughts and a lot of comments to make on criminalization about this bill. But one thing I would really like to make you understand, Mr. Conyers, is that the children are your future constituents——

[Laughter.]

Mrs. ARMSTRONG [continuing]. And they are your present victims. That is all there is to it. You are going to arrest people that are parents that are your constituents; there is no question about it. The police are going to become involved, and some of these parents are going to go to jail. But these children have got to be found.

If we are going to make a Federal law of H.R. 1290 or S. 105, or whatever becomes the law and we are going to make it a Federal offense, why are we not going to prosecute them? I take exception to the fact that very few prosecutions will occur with this.

Mr. CONYERS. I will yield to Mr. Edwards to explain the selective enforcement of the criminal justice process.

[Laughter.]

Mr. EDWARDS. I want to thank the chairman very much.

[Laughter.]

Mrs. ARMSTRONG. It is selective prosecution, Mr. Edwards, obviously. There is no question about that.

We do not do that in California, though. I would like to add that. We prosecute them all.

Mr. CONYERS. Well, I said that to yield to Mr. Edwards for any questions he may have of any of the panel, but I should point out to you that the selective enforcement of the law is one of the problems that is brought about by the massive number of criminal complaints that overwhelm both the State and Federal systems.

I think you have directly pointed out some of the reluctance about making this a criminal offense for the first time: That is if we are going to make it a criminal offense and are not going to seriously invoke it, I really wonder how many parents are going to worry about the misdemeanor offense that is connected to this when you consider the deep emotionality that is frequently connected to these kinds of disputes.

Mrs. ARMSTRONG. Are you committing, then, Mr. Conyers, to the fact that it should indeed be a felony?

Mr. CONYERS. No, I am not. I am wondering whether it should be made a crime at all, especially if in the real world of selective prosecution—the world where unless there is absolute danger—even with this law it would seem to me that the FBI would probably be a little bit reluctant to go after each and every parent who might in fact be in violation.

What does this FBI agent do, for example, when the parent says, "I'm on the way to turning the child in; this is the 25th day"? There and then the FBI agent has to make a determination as to whether to prosecute now and look rather foolish when the parent completes the return of the child as he said he would, or wait for 5 more days and find out that the parent has then subsequently left the State.

These are the kinds of real problems of enforcement that we have to consider as thoroughly as we can now.

I yield now to Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

These are excellent witnesses, and they have described a very real problem that exists in our country. I know this subcommittee, and indeed the entire Judiciary Committee and Congress, will take this subject very seriously.

The chairman did mention one problem that we have in the United States, and especially in urban America. For example, I believe last year there were 100,000 felony arrests in just New York City alone, but only 10,000 prosecutions. That is the problem that the FBI, and the Federal police generally face.

However, by saying that, I do not want you to think we are not taking this problem very seriously and we do not appreciate your testimony.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Hyde of Illinois.

Mr. HYDE. Thank you, Mr. Chairman.

Some of these cases are truly domestic disputes, and not every situation involves a hazard to the life of the child. A loving parent can be the abductor, as well as the person from whom the child is abducted. It can really be a domestic dispute—very sad, and very anguishing. But, to involve the FBI in every one of these cases, when we set estimates of 25,000 to 100,000 per annum, does create a very difficult problem. I have expressed interest in creating what I thought should be a Federal crime of baby selling. The FBI did not want to get into that area either because of limited manpower. But surely, at a minimum, in those cases where harm may come to the child, as in your situation (indicating Mrs. Armstrong), and in your (indicating Mrs. Coleman) situation, too, where an illness was there that could potentially harm the child, I think Federal law enforcement should enter into it.

On the other side, I am not troubled by the mere fact that a law may be selectively enforced, because that is true of every criminal law. There is a deterrent element if the law is on the books, even if it is enforced selectively. We do that every year with income tax evaders. There is a spate of indictments just before April 15, and I think that is very therapeutic! [Laughter.]

We have a tough, practical problem of trying to cope with the volume of cases where a Federal nexus is involved. How can we more involve the States with the full faith and credit of one State being given to the decrees of the first State? The problem is here, and we cannot walk away from it. We cannot turn our back.

Nevertheless, it would be wrong to expect us to impose Federal criminal penalties every time one loving parent feels abused and takes illegal custody of the child. I do not think that there are any clear-cut solutions to this, but I hope we can come up with an effective answer of some sort.

Mr. Conyers. Mr. Gudger?

Mr. Gudger. Thank you, Mr. Chairman.

I have been tremendously impressed with Mrs. Coleman's and Mrs. Armstrong's testimony, and the suggested situation relating to one of the theoretical situations mentioned in Mr. Miller's circumstance.

When you think back about 15 years ago, I do not suspect there were more than three States in the Union that made it a felony for one parent to kidnap the child from the other parent who had been awarded custody. Now I suspect fully three-fourths of the States do have that in the law now. I know my State of North Carolina does. Mrs. Coleman has said her State of South Carolina does. Mrs. Armstrong has pointed out that the State of California does. And I believe the gentleman from Wisconsin mentioned that Wisconsin does make it a felony offense after there has been an adjudication of custody and an award of custody, as was your situation, Mrs. Coleman, and as was your situation, Mrs. Armstrong.

In my State, 3 years; South Carolina, 3 years. I am inclined to think we are not treating this problem as seriously as we should, and that the very fact that we classify "just beyond felony jurisdiction/just above misdemeanor jurisdiction" indicates that my State of North Carolina has made this a very light felony. It is just barely a felony within the definition of felony within our general statutes.

Now the Parent Locator Service is very, very important. Now right now, the Parent Locator Service became available in your case, Mrs. Coleman, and in your case, Mrs. Armstrong, probably because of failure of support in conformance with the decree of that court. Because proceeding after a parent who has taken the child in violation of the State's decree does not give the Parent Locator Service jurisdiction to work, at least using social security information.

Now one of the problems that this bill addresses is to expand the Parent Locator Service so that social security secrecy will not be applicable to the absconding parent who has taken the child and sought asylum in another State. Do you follow me?

**Mrs. Armstrong.** I do.

**Mr. Gudger.** Parent Locator Services may be available to seek the parent to enforce support, but presently it is not available to seek the parent who has taken a child into another State. And you would say that this should certainly be available, would you not?

**Mrs. Armstrong.** I would, except I do have one exception that I would like to make. I think that it should be made available, but I also think that it should be complete.

We did a study in which we put 13 names into the Parent Locator Service through my organization. Of those 13 names, 3 were Congressmen, 4 were Federal judges, 2 were U.S. probation officers, 1 was an FBI agent, and the other person was myself. We gave a variety of different kinds of information—current local addresses in some cases, social security numbers in others, physical descriptions, et cetera.

I would like for you to know that only one Congressman was located. [Laughter.]

**Mr. Conyers.** This is due to his desire for anonymity? Or the ineffectiveness of the system?

**Mr. Gudger.** Very obviously.

**Mrs. Armstrong.** Obviously, the ineffectiveness of the system. Something that has been brought to my attention—and I am certainly not an expert in this area, so I cannot really tell you that it is an actual fact—but I have reason to believe that social security information, because of the quarterly reporting system, does not get in for perhaps up to a year. IRS information, if you are reluctant about it, with extensions and what-have-you, may not get in there for 1 year or 2 years. And if you are not reluctant and you file on April the 15th, it is still not available until the following fall.

So I think it should be expanded upon to some extent if we are going to use the Parent Locator Service, and make the information more current.

My daughter was gone 6½ months, and certainly in that length of time, if he had been using a social security number which he was not, it would not have been an adequate amount of time. It is not an immediate remedy, certainly; but it does work.

**Mr. Gudger.** I would like to exhaust this concern in my line of questioning. That is, how do we improve upon the Parent Locator Service?

I think we have addressed the fact of broadening the scope of it in dealing with this situation so that we can cover the absconding parent who has the child in his hand. But my concern now is: What tools can we give to the Parent Locator Service that might be useful?

Every one of these felony statutes that we have referred to has been a situation where the parents have been in court at one time. Before the felony can exist in most of these States, there has to have been a judicial decree granting custody.

All right. Now should that decree contain more data on both parents? Should it contain more than social security numbers? Should it contain military service records? Should it contain parental information? Should it contain sibling information? Should it contain a lot of additional information which might give a guide to where that absconding parent, both parents or either parent might go? Would this be useful if the decree could contain more information that present State decrees do not contain?

Mrs. Armstrong. Well, in California we do fill out a questionnaire that is a statistical questionnaire when a final decree is issued, certainly. But what happens to that information, I really do not know. I just know that I filled out one.

I think that if that information were fed into the Parent Locator Service at the issuance of any kind of court order regarding the custody of a child, then perhaps there would be many, many more leads than we have now. That would certainly be something that should be seriously considered.

Mr. Gudger. Well, if one of the parents has any criminal record, and that sort of thing, should that be made known to the court and become a part of this record, so that if there have been fingerprints and such information as that, it would be available?

Mrs. Armstrong. Well, when the felony warrant is issued, it goes out "over the wires," so to speak, or NCIC, or whatever it is referred to, then that information usually does become readily available.

Mr. Gudger. I believe it was your suggestion that your husband, during this period of absence with the child, changed his identity? He no longer had the same name. He probably applied for a new social security number, or tendered himself for employment as though he had no previous social security number. Did these things happen so that social security data would not be useful?

Mrs. Armstrong. Yes, they did. He did not use his correct social security number. As a matter of fact, as I recall he was working on what is commonly referred to as an "IRS tax dodge contract basis." So he did not even supply his employer with a social security number.

Mr. Miller. If I may——

Mr. Gudger. Yes. Now may I ask, would you comment on this? Do you have any ideas as to who we could make the research effective?

You mentioned in your testimony that out of 5,000 cases you found 150. Am I correct? On page two of your testimony, do I not find this statement——

Mr. Miller. We quoted a percentage. This is children——

Mr. Gudger. Here it is. "Our case files cover more than 5,000 children. Less than 150 of these children have been located to date."

Mr. Miller. Right.

Mr. Gudger. Now would you explain what you think can be done to locate those children?

Mr. Miller. Right now, when parents contact us, the type of advice we give them is to basically tell them where they stand. It is practical advice. It is advice of what other parents have tried, and what will and will not work based upon current law.

Some people try to use the PLS, and we will try to explain to them why and how the PLS will and will not work. Some parents have been successful getting their kids through. It depends on the local PLS office.

In general, the overall view—and the PLS is not supposed to take the cases where the parent has absconded with the child. We will go through and we will try to map out other avenues, but there is no question about the fact that it is a one-man battle. The victimized parent must put out the money, must do all the contacts.

Now you are talking about what other things can be added, and I frankly do not know, Mr. Gudger.

Mr. GUDGER. Let me say this: All of us are aware that since these statutes have been adopted making it a felony offense to abscond with the child after the custody order has been entered, thereupon, the law of extradition becomes available. Not only do you have unlawful flight to avoid prosecution, a Federal offense, become available in the Federal court structure, but you also have the right, if you can locate that parent, to have that parent extradited through the extradition process through the orders of the respective Governors of the two States, including the asylum States.

Mr. CONYERS. Could you bring your questioning to an end?

Mr. GUDGER. If you cannot locate the man, this is of no use to you. What I am asking you is: Give me some suggestions as to what should be made available to PLS techniques of location that are not presently available.

Ms. GUMMEL. I am not really certain that there is any more information that can be given to PLS, and I am certainly not aware that IRS and Social Security can get their records into a usable form any faster than they do. I certainly wish they could, but that is an internal problem that they have.

I do know there has been a lot of concern about expanding the PLS to find children, and everybody is kind of going, "Oh, horror; more people have access to the use of social security records," and so on.

But I have recently been informed—and I believe correctly—that the Parent Locator Service is about to start being used for food stamp fraud. And again, if they are willing to look for child support money, and they are willing to look for food stamp fraud, I find it really ludicrous that they are not willing to look for little children who are usually between 2 and 7 and consequently cannot make a phone call and cannot get themselves found.

When Arnie's son was taken 6 years ago—and we just found him last year in March—his name had been changed several times. He did not know where his father lived. He had been taken when he was 4½, and by the time he was 9, when we found him, he really had no idea who his father was, what his name was, where he had lived, or anything. That child had no way to find his father, had he wanted to.

At the same time, the father had no way to find the son. It is a problem that the other two women on the panel have experienced. One of them has been very lucky; the other may never find her child. And I think that is an incredible thing to say in this country.

Mr. CONYERS. I am sorry; I am going to have to move along as rapidly——

Mr. SENSENBRENNER. May I ask some questions, Mr. Chairman?

Mr. CONYERS. I am going to recognize you, Mr. Sensenbrenner. I wanted to find out, though, if Mrs. Coleman wanted to respond one time to these proceedings?

Mrs. COLEMAN. I did, at one point.

We have a felony warrant issued, and I have yet to have the State or the Federal agencies recognize it. I do not know where else to turn, as I had stated.

We have got a felony warrant issued against the brother of my former husband, my ex-brother-in-law. We have evidence and proof, which we had to have to write the warrant, that he helped with this abduction. They arrested him in Charlotte, N.C. They booked him. He was out on bond——

**Mr. Conyers.** He helped with the abduction?

**Mrs. Coleman.** He helped with the abduction. He rented the car that was registered at the motel the night before my son was taken. And through the police department in Anderson's search, they found this out.

They arrested my ex-brother-in-law in Charlotte, N.C. They booked him. They let him out on bond. When it came time for the extradition hearing, the solicitor of South Carolina and the Governor of South Carolina said: "No, they are not going to extradite," to quote, "this is dirty." And we have the evidence to prove he helped do this.

We have a $1½-million lawsuit in progress down in Charlotte, N.C., which started 2 years ago. I have yet to see the inside of a courtroom door. The judge in North Carolina—the superior court criminal judge in North Carolina—said he does not know what to do. So now we have appealed to Raleigh, and I am waiting now to go to the court of appeals.

**Mr. Conyers.** Thank you very much.

Now, Mr. Sensenbrenner.

**Mr. Sensenbrenner.** I am convinced that this problem is a very real problem, and that Federal legislation of some sort is necessary to correct it. I am inclined to go along with the criminalizing of child abduction, simply because it will bring some of the investigatory powers of the Federal court system and the FBI into play.

The testimony from this panel—as well as Representative Fish's testimony in answer to my question—very clearly indicates that the primary problem is one of locating the child and locating the abducting parent, rather than a failure of law enforcement, or a failure of the court system to act once the child and the abducting parent have been located.

On that issue, I notice that Mrs. Armstrong spent $28,000 to successfully recover her child; and Mrs. Coleman has spent over $30,000 to unsuccessfully recover her child to date.

I would be interested to know what both of you ladies spent this money on. Exactly what kinds of expenses were incurred by you in your search for your children?

**Mrs. Coleman.** We have had telephone bills each month, following leads, from Federal, State, and local government departments we would call. We have not had a phone bill yet, since my son was taken, of less than $120 a month. I have called every relative, every neighbor, boards of education; I have called the State of Michigan where he has relatives; I have called his new wife's relatives, neighbors, friends, and so forth, in the State of Florida.

I have had private investigators which, unfortunately, have taken a very large sum of our money—right now, over $5,000—and were just total "crooks." We sent one man in particular $2,500. He made me all the promises I wanted to hear. We sent him the check for $2,500 and after that, he refused phone calls, he refused letters, and that money is gone. It is as if I tore it up or burned it.

We have spent travel time—your motels, and restaurants, and so forth—to stake out places. We have a lawsuit going. I have an attorney in hire which I have had now for 2 years, and he is a very highly respected attorney [illegible] Charlotte, N.C. His fee is not "cheap," as you would say. He is an expensive highly qualified attorney. Yet, I have not found my son, so I have more to do and more to spend. We figured it up. It has come to over $30,000 now.

Mr. Sensenbrenner. Mrs. Armstrong?

Mrs. Armstrong. I would say likewise, in our particular case, that we spent money on exactly the same things. Our private investigating bill was something in excess of $17,000, and that was 12 intensive days of search by three private investigators. This was in addition to having two FBI agents who were working on the case practically full time during those 12 days, and the local police department which was actively running record checks and doing things for the FBI and for the private investigators.

So the majority of my money was spent on that. We also had hotel bills in Los Angeles for 12 days for my husband and myself, and air transportation. I believe this is my fourth trip to Washington, and it is not cheap to come here.

Phone bills. I have not had a phone bill of less than $300, I do not think, in a very, very long time.

Printing charges, interestingly enough. I had 150 flyers made up and sent them to nursery schools—a "wanted" poster, if you will. Postage, sending those posters out to the area where we thought he was.

Advertisements. We ran a reward advertisement in the Las Vegas Review Journal, in the Los Angeles Times, in the San Francisco Chronicle, with pictures of the child, offering a reward, a sizable reward, for information leading to the arrest, and the return of my daughter.

All those things add up. And it was only 7½ months. Now I admit that I perhaps pursued this with more economic vigor than the majority of people are capable of doing, because I had a lot of resources and a lot of support and a lot of help—family, friends—money was available to me. So I was able to do it much faster.

I cannot imagine what happens to people who do not have any money to do any of these things.

Mr. Sensenbrenner. One of the arguments that I am sure will be leveled against this bill is that, if it passes, the types of expenses that both of you ladies have described would be shifted from the families looking for their abducted children to the Government.

Does either of you think you would have spent any less in trying to track down your child privately if this bill had been law when your child was abducted?

Mrs. Armstrong. I think I would have; yes. Perhaps, because it would not have taken me 4 months to get the FBI involved, and when the trail was still very, very warm. He was driving a car interstate, and we could not get it on the computer. We had the license number.

I think that this is why I basically disagree with the 60-day element in the bill that says that you have to wait 60 days for the FBI to become involved. I think if the FBI became involved immediately upon the issuance of a local-State felony warrant, we would have many more children back much quicker.

Mrs. Coleman. In my case, my ex-husband sold everything he had in August before he abducted the child in October. He moved in with his parents. There were absolutely no records. My present husband—I have remarried—is a police officer, now. He has access to quite a few police computers in both our State and through cooperation from neighboring police departments. We have not had a police department help us, yet. So my husband worked in the capacity of a police officer investigating this case totally on his own.

If we had had somebody totally professional, as the FBI agents are, they would be out tracking my ex-husband instead of us. The investigators we have had made us all the promises, but made only flimsy attempts. We did more footwork than they did; and we did it by learning. We went from one place to another.

If we had had somebody professional—as you know, by the reputation of the FBI, they are—then maybe we would not have had quite as long a journey. And I still have the road to go down that, fortunately for Mrs. Armstrong, she has found hers. I haven't. And with no law now, and with the time that it is going to take to pass the bill to get it into enactment, my son's life is slipping away from me.

An ex-husband, everybody says, has a right to the child; but so do I. And I have nobody helping me. Nobody has given me the right to my son. The Government is helping him hide, because you are closing the doors on me. And we have nowhere to go or no one to help us but ourselves.

Mrs. **Armstrong**. May I make one further comment that Mr. Hutchins brought to my attention, and I really had forgotten.

Two days after my former husband took my daughter—namely, the 24th of October—he went to the State of Oregon, where he obtained, by walking in and signing his name on an application, a picture-identification photograph driver's license. We already had a warrant for his arrest in California. It was already out. But if there had been some Federal coordination between the States at that point when he applied for that driver's license, even under a phony name, if he had been required to put a birth certificate or something like we do in California—when you go and get a first-time driver's license, you have to show your birth certificate or some form of identification—if that had happened, we perhaps would have gotten him right then and there in the driver's license bureau. We would have gotten him in California if he had gone in and given some form of proper identification and not forged.

So it is a possibility that if we had had the FBI involved immediately we could have gotten him.

Mr. **Sensenbrenner**. As I understand both of your answers to my question, a lot of the expense that you had to bear was a direct result of the fact that you could not get law enforcement involved shortly after the abduction while the trail was still fresh. Therefore, much of this burden would not be transferred to the taxpayers.

Mrs. **Armstrong**. I believe that is true. Also, we have to remember that this is an individual concern, and people are going to spend according to their individual needs and desires, as far as this is concerned.

I would be the first one to tell you that my excessive expense was totally predicated by myself and my family's feeling that if we did not find her now, we would not find her alive. So considering that, your parents, your cousins, brothers, and whatever, are willing to spend any amount of money to help you do that.

And if the FBI had been involved immediately in my case, I think everyone would have relaxed; we would not have taken as much time and expense as we did; and it probably would have been done very simply and very quickly. He did not go very far—540 miles.

Mrs. **Coleman**. It can help take the trauma off if you know you have somebody professionally trained helping you. In my case, I am living with the fact that I am doing it myself. If I do not find him, it is my failure, because we have no one else to help us. And in my case, he has been gone almost 3 years. He was only 5, so he does not know how to contact me, as was stated, between 2 and 7 years old. So this is what I am trying to say: He is almost 9 now. And if I find him soon maybe I can reverse some of the things that have been told to him by my ex-husband and his wife.

We have found these children have been told, "I didn't want him; I'm going to die," things traumatic to him. I am living with this. This is my first-born child, and I am living knowing he is living in this kind of circumstance. And I know if I do not find him before long, I cannot change some of the things that have been told to him. I will only be able to change the way he has had to live. And what am I going to do if we do not get this bill passed and enacted soon?

My trail is old, now, so I am going down streets that we have gone down over and over and over again. He was smart enough to know how to do what he did. He sold everything. He got rid of everything. He changed everything before the abduction and he then stole Ryan and dropped off the face of the Earth. How a man—he has remarried to a woman that had a child—how four people can drop off this Earth, I do not know; but he did.

We have been through, we think, everywhere we can go. So if we do not get it enacted, and enacted and enforced, I am going to lose him. Fortunately for her, she has not; but I am going to. And that is awfully hard to live with.

Mr. **Conyers**. We want to thank all of you for an extremely important personal testimony. We appreciate your work, Mr. Miller. We know it has been long and difficult.

Mr. **Miller**. Thank you, Mr. Chairman.

Mr. **Conyers**. You may be assured that this subcommittee has been impressed with the problems, and we will continue to work with you for a Federal solution.

Thank you all, again.

Mrs. **Armstrong**. Thank you.

Mrs. **Coleman**. Thank you.

Mr. **Miller**. Thank you.

[The prepared statements of Mrs. Coleman and Mrs. Armstrong follow:]

### PREPARED STATEMENT OF SANDRA JETTON COLEMAN

My name is Sandra Jetton Coleman. I am 31 years old. I am a high school graduate with formal training as a medical assistant and a paramedic. I am now married to Danny Ray Coleman. We have one son. My husband is a city police officer for the City of North Myrtle Beach, S.C. My full time job is pursuing my stolen son.

I was married to Norman Franklin Shirlen, Jr. in 1965 in Charlotte, N.C. We had one child, a son, from that marriage. His name is Martyn Ryan Shirlen, date of birth 10-14-71. We were separated in 1974 and divorced in 1975. At that time I was given custody in the State of North Carolina. After our separation I moved to Surfside Beach, S.C. to live with my parents, Harley and Sue Jetton. I had to move in with my parents for the help they could give me, alone and with a small child I had to start over after 9 years of marriage. It's not easy. I was also given custody in the State of South Carolina from a family court judge in 1976. Dan and I were married in 1977 and we re-located to Anderson, S.C. where Dan had new employment. He was offered a job he very much desired and the benefits were very good. My ex-husband was told of my move to Anderson, S.C. Ryan began the first grade at Whitehall Elementary School the first of September 1977.

On Tuesday morning, October 4, 1977 I took Ryan to school as usual. About 1 o'clock that afternoon his teacher called me to ask how Ryan was feeling. I then became hysterical because I had taken Ryan to school myself. She then put the principal on the telephone. He told me to come right over. When I got to the school the police were already there. During the investigation of my son's disappearance the school learned from his first grade teacher that after class had taken up that morning a man with a camera claiming to be with a national teachers magazine told his teacher he was there to film her class for this publication. At this time he had her with her back to the class. My ex-husband picked my son up and carried him out of school. Another first grade teacher, that was later questioned and did not know the circumstances, said she saw my ex-husband carry Ryan out of school. Of course, we learned the man with the camera was just a distractant for the snatch.

The long search now begins. We went to a local attorney who tells us he thinks there is a law making this a felony in South Carolina. We are sent to the family judge in Anderson who first confirms my custody of Ryan and then checks the supplement for this new law. He finds it and we then go to the magistrate who writes a felony warrant against my ex-husband. This is written as follows—Transporting child under 16 years of age outside state with intent to violate a custody order 16-17-515. We then went to Charlotte, N.C. where he is/was living and like everybody else hired a private detective agency. They did some very simple footwork for us at a cost of $900.00. We then began our own footwork. We went to see a psychic in Charlotte by the name of Don Hudson, we wrote to several supposedly well known psychics but never received a reply.

We went to the University of North Carolina where my ex-husband was a student to see if there was any information there that would be helpful to us. We checked with the school board in Charlotte to see if my son was enrolled in a local school. They wouldn't tell me anything without a court order. I asked the telephone company for any new listing or where his old bill was sent, they were no help. We also did the same for all his utility bills. We knew he had re-married and where his stepson was in school. We went there to see if a request for records to be transferred had been made, they would tell me nothing. We then called credit card companies, we went to all the banks in Charlotte and the outlying towns checking for the opening of new bank accounts. Let me say now at just about every place and agency we went to we were told over and over they could not give us any information because of the Privacy Act or unless I had a court order.

I then learned from his neighbors that he had had a yard sale in August 1977. It was quite an unusual yard sale as we learned they sold everything they had including both cars they owned. They then moved in with his parents. We ran VIN numbers, drivers license—which have since come due for renewal but have not been renewed by either my ex-husband or his new wife, registrations etc. They have nothing in their name. We have run social security records for both since this snatching about every 6 months, with no records of anything being paid in. We have sent a letter to President Carter only to receive a form letter back. We went to Parent Locator Service only to be told that we had a felony warrant issued and had already been through the agencies they use so they could be of no help to us. We had our city judge in Anderson, S.C. request from the U.S. Attorney General a review of our case and to possibly intervene, again we were turned down. We had Congressman Butler Derrick ask for help through the Justice Department and he was unable to get any for us. We have a felony warrant against my ex-husband but have yet to see it worth the paper it is written on. We went to the F.B.I. in Columbia, S.C. and talked with Mr. Ike Lee. He told us he would speak with someone with the Justice Department, as my son has a medical problem that could become life-endangering.

Several days later we spoke with Mr. Lee again and we were turned down. This is a felony but the F.B.I. feels it is an unimportant felony—how do you tell the difference? We did not know there were important and unimportant felonies. Next, we went to the F.B.I. in Charlotte, N.C. and of course, we were turned down and shuffled out the door. At both of these agencies we asked to have a UFAP warrant issued but to no avail. We hired a private investigator by the name of George Theodore in Illinois who took $2,500.00 from us and fled. We have gone through workman's compensation, the F.A.A.'s main office in Oklahoma (my ex-husband is also a private pilot). We have sought out the local physician's in the Charlotte area that perform flight physicals. We've talked with credit bureaus, Department of Vital Statistics, magazine companies. We've traveled to Michigan (my ex-husband has a large number of relatives there) checking with school boards, private schools which by the way threw us out the door, the utility companies and some neighbors of his relatives. We have done the same investigation on the new Mrs. Shirlen. We've traveled from Michigan to Florida. The new Mrs. Shirlen has family in Florida. We have had our telephone bill to be no less than $120.00 every month since my son was snatched in 1977.

During our investigation we learned my ex-husband registered a car at a local motel (in Anderson, S.C.) the night before my son was stolen that turned out to have been rented by his brother. This made my ex-brother-in-law an accessory before and after the fact and was of course enough evidence to have the same warrant issued for him. He was picked up and booked in Charlotte, N.C. but when it came time for the extradition hearing the solicitor, Henry Raines in Anderson, S.C. said he would not have him extradited because this was "dirty".

My ex-husband turned over all power of attorney for himself and his wife to his father in June 1977 (before the abduction of my son). He moved to his fathers home in early September 1977. He has worked and was at the time of my son's abduction with his father. His father is self-employed and he has worked for him since the age of 12 or thereabouts. We have the fact that a phone call was made prior to the abduction to the new Mrs. Shirlens employer by my ex father-in-law stating that she would not be returning to work because they had moved and had taken her husband's son out of Anderson, S.C. He was told to forward all paychecks and/or vacation checks to him. With the obtaining of this and some other information we have begun a million and one-half dollar law suit in Mecklenburg County Court, Charlotte, N.C. This suit is against Norman Franklin Shirlen, Sr., Reba Bridges Shirlen, Ronald Albert Shirlen, Norman Franklin Shirlen, Jr. and Jessie Richmond Hill Shirlen. We were told this would be tried in Federal Court but the Federal Court Judge very quickly looked at our case, said it was a custody case and tossed it down to state court. This, of course, is not a custody case as that was decided years ago. We have had an attorney, Mr. William James Chandler in Charlotte, N.C., in our hire since we began this suit in June 1978 and have yet to see a courtroom doorstep. You know, we are no closer today to locating my son than we were three years ago. We have spent, as of the present date of June 13, 1980, in excess of $30,000.00.

I had the great privilege of being filmed for the upcoming segment of Child Snatching done by ABC Television Show 20/20. This will air in the fall of 1980. They felt my story was so unique because of the total isolation I've received from all local, state and federal agencies. We have seen the buck being passed everywhere we go. We now have gone and done all we can do. We have nowhere else to go; that is, agencies or finding my ex-husband through any type of record. But I'm not going to stop hunting my little son. Not until death stops me or I find him whichever comes first. Before you lawmakers make your judgment that affect victims of this most terrible crime (the trauma of this crime alone is irreparable walk in my shoes for one year—not the three years as I have already with probably even more years to suffer my loss.

Help us by making this crime punishable and maybe these snatchers will return our children. I carried my son 9 months and because the Lord was willing I had a normal and healthy delivery but in a second at the age of only 5 years he was snatched from me and you lawmakers and law enforcers turn your back to my plea for help in finding my son. If you chose not to help me I've lost a son. The only way I'll be able to find him and to retrieve him will be through vigilante methods. At this point I could become the criminal when in actuality I am the victim.

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## PREPARED STATEMENT OF MAROLYN WEST ARMSTRONG

Mr. Chairman and honorable members of the committee: Today the Subcommittee on Crime of the House Committee on the Judiciary will examine a problem of grave concern and personal issue to me—The Abduction of a Child from One Parent by Another Parent—and a proposed solution, H.R. 1290 and related bills concerning parental kidnapping.

My name is Marolyn Armstrong. Although my professional background is in economics and law, and although I am the author of a forthcoming book, "The Search for Mary: A Paper Chase," and a member of the Advisory Board of Stolen

Children Information Exchange, Inc., a California-based non-profit corporation devoted to the exchange of information to assist parents and children in abduction cases, as well, I come to you as a mother—the mother of a child-snatching victim.

Although no reliable statistics are available, it is estimated that somewhere between 25,000 and 100,000 children are kidnapped each year. On October 22, 1979, my two-year-old daughter, Mary Elizabeth, became one of them.

Mary Elizabeth was born a little over three years ago, after her father and I had separated. We subsequently divorced. Custody of our daughter, child support and visitation were agreed upon between my ex-husband, Phillip L. Johnson and myself, and an order granting me full custody was issued on April 9, 1979. Mr. Johnson has a history of severe alcoholism, psychiatric disorders and drug abuse. After having been hospitalized many times for treatment and rehabilitation, he seemed much improved—even, one might say, doing well. He visited Mary Elizabeth on a regular basis, taking her away for overnight visits as well as day visits. It seemed to be going well. Then one Friday in early September, 1979, he picked Mary up for an overnight visit. He telephoned me the following Sunday from his brother's home in Colfax, Washington, and told me that he had taken Mary for a "ride," a 1000 mile ride, and wanted to "keep" her. My world was in a spin. He obviously no longer intended to continue his rehabilitation programs, my daughter would no doubt be subjected to his drinking and drug problems—and I was 1000 miles away. I knew he had violated some law—just what law I wasn't sure—so I threatened to call the F.B.I., the local authorities in Washington and the Union City Police. I succeeded in intimidating him, and he returned my daughter, by plane, that evening. Unhappily, it was not the end—but only the beginning. On October 22, 1979, once again Mary Elizabeth was gone—not for 72 hours, but for six and one-half long months.

We who live in California are more fortunate than most. We have a law, criminal penal code section 278, which makes parental kidnapping a felony. When I had confirmed that Mr. Johnson had vacated his premises and taken Mary with him, I called the Union City Police and Patrolman James Providenza responded to my desperate call. A police report was taken, an all points bulletin was issued, and the hunt was on. We made phone call after phone call, attempting to get even a small lead, to no avail. I didn't sleep, think rationally or function normally. My marriage, my work, my child all suffered. And what about Mary Elizabeth? Where was she? What had she been told? Did she think I didn't love her, want her, care? Was she being fed, getting her vital allergy medications—or was she locked in a car while her father drank or got loaded?

A felony warrant, charging P.C. 278, felony parental kidnapping, was issued by the Child Support Division of the Alameda County District Attorney's office. (The distinguished gentleman at my side is Alameda County Deputy District Attorney Robert Hutchins, who prosecuted that felony warrant.) With the felony warrant, I thought it would be easy to locate my daughter. But, in spite of the unrelenting efforts of Detective Tony Montemayor, Union City Police Investigation Division, not a clue was to be had.

Christmas was rapidly approaching. Certainly Phillip would call me then. I had an answering service; I couldn't afford to miss a call. Nothing came in, from Phillip or anyone else. Then we received information he had been seen in Colorado, his home state. But it turned into another dead end.

Even though I called the F.B.I. when Mary Elizabeth was first kidnapped and was told they could do nothing, I called again in early February. The Special Agent in charge of the kidnapping detail suggested I ask the U.S. Attorney's office for an Unlawful Flight to Avoid Prosecution warrant. He felt that "perhaps" I met the necessary elements. Those elements were: A felony warrant must be the basis; proof must have been (a) established that Phillip crossed a state line with the child, (b) that she was in physical or moral danger and (c) that Alameda County would extradite him no matter where he was arrested. I set about to meet those requirements and on or about March 10, 1980, a UFAP warrant was authorized by Roger Adams an assistant Attorney General in the Crime Section of the Justice Department. Now the F.B.I. would begin an investigation. Mary would be found.

The F.B.I. reinterviewed me and sent out requests for field interviews with Mr. Johnson's mother, brother, other family members, friends and former employers. Nothing. But, he did find out that the F.B.I. was involved—someone they interviewed must have tipped him off. He abandoned his car. The San Bernadino County Sheriff's department notified Union City Police that they had impounded the car and we had a clue.

At last, April 28, 1980, I received an anonymous telephone call. My ex-husband and daughter had been seen in a restaurant in Sepulveda, California. I called and was told that they did indeed frequent that restaurant, a restaurant with which I was familiar. In view of a manpower problem on the part of the F.B.I., and because of my intense desire to find my child, I decided to hire a private detective. Together, we organized an intensive twelve-day manhunt, coordinating the efforts of the private investigator, the F.B.I., and Los Angeles local authorities. On May 7, 1980, six and one-half months and $28,000.00 in personal expenses later, Mary Elizabeth was in my arms. The nightmare was now almost ended.

Even though my daughter and I are reunited, I still experience moments of extreme fear and apprehension. I am afraid that this nightmare which lasted six and one-half months will happen again. My ex-husband will soon be released from jail.

He was charged with one count of Felony Kidnapping and two counts of Child Abduction. He had lived in terrible conditions, Mary had had no medical treatment, he was under the influence of alcohol when arrested. Because he assumed a whole new identity, he was almost impossible to find. He told the F.B.I. agents who arrested him he would "do it again and again" and this would be his "life struggle." Upon a guilty plea to one count of child stealing, he has been sentenced to six months in County Jail, to be followed by a term of five years probation. He is to make restitution to me for my costs incurred in the search for my daughter and he is not to contact either Mary Elizabeth or myself. What that means is that we have a six month reprieve. After that, what protection do we have?

My daughter is now three years old. She has emotional scars. She wakes up crying "Mommy—Mommy." Once reassured of my presence she falls asleep again. We have reason to believe she had been told I was dead. We are trying as a family unit to overcome this insecurity of hers and to heal these scars.

Several noted psychologists have observed that child stealing is "the severest form of child abuse today." Yet the F.B.I. treats child stealing as a family matter, to be resolved by the domestic courts. Are we to suppose that wife murderers should be tried in domestic courts as well? I am neither a psychologist or sociologist, but I will testify to you that even though most of the children snatched are not physically abused, the trauma caused by snatching survives for many years. Even in amicable divorces, children frequently feel that they are the cause of divorce and that their parents blame them. They are insecure. Children who are snatched are frequently told that the other parent "doesn't want them," "doesn't love them," "is angry with them," or "is dead." These children will suffer from the trauma of their kidnapping for years, and for much too long that trauma has been disregarded by authorities.

What about the parents who snatch children? Few if, indeed, any do it out of love of the children. Any intelligent human being can see that to deprive a child of a parent, to conceal the child, to run away with the child is not done out of love of the child. It is done to hurt, for revenge on the other parent. Sometimes it works! Often the other parent does suffer nervous breakdowns and/or total physical and mental collapse. And, of course, in every case the victim parent's anguish is intense.

Other family members suffer also: my 12-year-old son's grades in school took a nose dive; my present husband blamed our remarriage for the situation; my aged parents couldn't rest and their health suffered. How can anyone say this is all a "domestic" matter when such an impact is made on so many? If we use only the numbers available to us of child snatchings per year—and as divorce grows in this country, so grows child snatching—by 1990 one out of every five human beings in this country will be affected by this crime. Isn't this a national issue?

The opposition still insists that the Federal Government should not get involved in this area. They say that this legislation will make criminals out of parents who are simply exercising their parental rights, no matter how extreme it may appear. I must say, this notion is extremely misguided. Mere parenthood *does not* give anyone the right to abuse a child. The child is an individual with rights that must be protected.

This has long been recognized by the law. Child Protective Services has agencies in all fifty states, and that agency recognizes that children must not be abused by their parents. Child Protective Services will bring criminal charges against parents who mentally or physically abuse their children. The facts being such, gentlemen, all that remains is for this Honorable Committee to recognize the undeniable fact that child snatching is child abuse. Legislation is needed to protect children and must be passed now.

Still, the opposition argues that the Federal Government should not get involved. They say that arrest of the abducting parent by the F.B.I. would cause unnecessary trauma for both parent and child. Yet child snatching is a felony in my home state of California and parents who commit it are arrested there. I can find no evidence that an arrest by local authorities is any less traumatic than an arrest by the F.B.I. The psychological effects are the same. As a matter of fact, most criminals will tell you that the "Feds" arrest with a lot more "class" and the accommodations are far better.

A snatched child does not grow up to be your lawyer, your doctor, your dentist, or professional. Just as a victim of child abuse has emotional trauma, children who are snatched become insecure adults who are unsure of themselves and the world about them. They have grown up running from place to place and hiding. They become, in most cases, a burden on society. Twenty-five thousand to one-hundred thousand children growing up to become, most of them, burdens on society is a serious national problem. Many of these children are on welfare. As adults, they remain on welfare. Snatched children, when they become adults, do pay less taxes and are less productive. The Federal Government is already involved in paying the cost. Paying the cost does nothing to prevent or cure. This legislation can prevent child snatching. It can prevent a child from becoming a less than fully productive adult. It may even result in the saving of taxpayer's dollars. The Federal Government can not ignore abused children nor destruction of the life of one child—much less the lives of twenty-five to one hundred thousand children.

As I mentioned earlier, sitting next to me is Robert Hutchins, Deputy District Attorney, Alameda County. His statement is attached. I would like to defer to him now. Please protect our children and pass this legislation now. Thank you.

ILE COPY

Testimony of
CHILDREN'S RIGHTS, INC.
Regarding
The Parental Kidnapping Prevention Act of 1979
H.R.1290
Before the
U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
24 June 1980

## SUMMARY STATEMENT

Children's Rights, Inc., is a national non-profit organization seeking a solution to the problems of child-snatching and child restraint. These are issues which are emotionally abusive to children, and create a traumatic world for them which should be avoided.

Although the reasons for child abductions vary from case to case, the similarities are very significant:

- children are taken out of state,
- no custody determination has been made prior to abduction in most cases,
- average ages of abducted children are 2-7 years old,
- children are concealed by the abducting parent.

Results of child-snatching

- children lose their sense of community,
- children usually require psychiatric and/or psychological counselling,
- children are often behind in schoolwork,
- children have been told tnat their other parent has died or no longer loves them,
- locating the child becomes the responsibility of the victim parent.

Physical dangers of child-snatching

- children taken at gunpoint or in violent scenes,
- children thrown into trunks of cars,
- children grabbed off the street into speeding cars,
- significant numbers of abuses, neglects and deaths.

CHILDREN'S RIGHTS, Inc.

Inability of States to cope with child-snatching

- excerpts from various States' Attorney Generals,
- difficulties in getting state felony warrants,
- warrants useless outside issuing state,
- extradition rare.

Discussion of H.R.1290, the Parental Kidnapping Prevention Act of 1979

- all children must be protected,
- use of state and federal Parent Locator Services,
- full faith and credit in custody awards.

Letters from children

Reprints from "Our Greatest RESOURCE . . . Our Children"

TESTIMONY OF

CHILDREN'S RIGHTS, INC.

REGARDING
THE PARENTAL KIDNAPPING PREVENTION ACT OF 1979
H.R.1290

BEFORE THE
U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME

24 JUNE 1980

Prepared and Submitted by:
Arnold I Miller,
President

and

Rae Gummel
Vice President

CHILDREN'S RIGHTS, Inc.

Testimony of
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Before the
U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
24 June 1980

Our organization, Children's Rights, Inc., is the only national organization dealing specifically with the issues of child-snatching and child restraint. Since our inception in March of 1975, we have counselled over 5,000 parents victimized by child-snatching, as well as tens of thousands of other parents with restraint or other custody-related problems. We receive a daily average of 22 pieces of mail per day, as well as 16 telephone requests per day for assistance or information. We have responded to this deluge to the best of ability as a non-funded, non-profit volunteer organization, with a one-person national headquarters staff (sometimes aided by student interns) and a contingent of ninety other volunteer chapter coordinators and "Lend an Ear" hotlines. We have been doing this work, which consists of telephone counselling (non-legal), writing and distributing informative materials including a quarterly newsletter, providing technical assistance for local, federal and even foreign agencies trying to deal with the increasing problems of child-snatching and child restraint, and trying to help children who are frightened that these things may happen to them, for almost five years, from our home, all day every day. It has been exhausting, but it has been well worth the effort, because we have helped. But we are severely limited in the help we can offer, because of the very nature of the problems of child-snatching and child restraint. Child-snatching, in particular, is a most confusing and emotion-laden problem, and one which laws generally do not address. In recent years, there has been a noticeable interest shown by the American public and Congress, and we are heartened that at least preliminary steps are being taken to alleviate some of the grief and hopelessness of these situations.

First, it is important to understand the difference between the two concepts of child-snatching and child restraint. Without a complete separation of these two issues, the proposals of S.105 are difficult to comprehend in their true light.

Child-snatching is the wrongful taking and concealing of a child by one parent from the other. It not only describes the physical separation of the child from one parent, but the uncertainty of knowing if or when the child and "victim" parent will ever be in contact again. Our case files cover more than 5,000 children. Less than 150 of these children have been located to date. Of these, less than half have been returned to the parent from whom they were originally taken; in roughly ¼ of the found cases, the "victim" parent is afraid to instigate any kind of action, for fear the child will be abducted again before they can get into court. This fear is based of the loopholes in current state and federal law in the U.S., as well as the lack of international conventions, pacts or treaties to deal with these actions.

Child restraint is a similar but much less expensive action, both financially and emotionally. In restraint, one parent fails to or refuses to permit access to the other parent for communication and visitation with the child. Please realize that neither child restraint nor child-snatching is a custodial issue — custody is a separate concept, dealing with court hearings and judicial decisions. Too many persons make the error of confusing child-snatching and child restraint with the custody issue and become bogged down in a unnecessary plethora of court documents which have no real bearing on the issues of child-snatching and child restraint. Indeed, our records indicate that in over 70% of child-snatchings, there is no award of custody yet at the time of the abduction/concealment of the child.

This is one reason why the laws are so ill-equipped to deal with the problems which are built into the child-snatching and restraint situations. In the states which address the problem at all, the tendency is to refer to taking the child "from the lawful custody," or "knowing such taking to be unlawful." This allows interpretation of statutes to mean that only the taking of a child from a parent with legal, court-ordered custody is applicable for the purpose of the statute. And that is exactly how those laws are being interpreted. We have many incidents in our files in which a parent with custody took the child, concealing him or her from a parent who had been ordered visitation rights; invariably, law enforcement officials have interpreted those takings to be "lawful," because the abductor had court-ordered custody. And of course, in the vast bulk — 70% — of the cases, these laws are totally useless — there was no custody decree, therefore there was no violation of a decree, therefore no "unlawful" action took place. Imagine the frustration of a parent being told that if only they had obtained custody prior to the abduction, a warrant could be issued! As though the child is any less traumatized because he or she wasn't "covered" by a court order!! It is a well-known fact that custody orders are always modifiable upon changes of circumstances, or if the needs of the child and/or the ability of the parents to meet those needs change. It therefore seems quite ludicrous that in a situation so traumatic and fraught with psychological and often even physical danger to the child, no assistance will be rendered unless the "victim" parent was previously given court-ordered custody of the child! Lest it sound as though a victimized custodial parent has nothing to worry about, however, let us continue the scenario. True, the non-custodial or pre-custodial parent walks away with empty hands and no argument. But the parent who had a valid and binding court order previous to the abduction may be only a little better off. First, if the child was abducted during court-ordered visitation, the authorities may decide that the abductor had "temporary" custody during visitation, and that therefore he or she was entitled to keep or take away the child! This may sound ridiculous, but it happens too frequently to be considered amusing. Even if the warrant is issued, it may be a great disappointment — most states consider custodial interference a misdemeanor, which means that a) nobody in the issuing state is going to go to any trouble to look for the miscreant, and b) not only will nobody in another state look for the abductor, but if found, it is highly unlikely that he or she would even be apprehended, much less prosecuted.

A question that comes up too often in our conversations with parents is "But isn't this kidnapping? Why won't the FBI find my children?" First, of course, it isn't kidnapping — not according to the applicable federal statute, which states that a person is a kidnapper who "unlawfully seizes, confines, inveigles, decoys, kidnaps abducts or carries away and holds for ransom or reward or otherwise any person, _except in the case of a minor by the parent thereof_." (Emphasis added)

This parental exception has been law since 1934, and the United States has changed drastically in the ensuing forty-six years. One of the most notable changes, particularly in the past ten or fifteen years, has been the rapidly-climbing divorce rate and, consequently, the increasingly common phenomena of child-snatching and child restraint. These child-related offshoots of separation and divorce have caused great concern among professionals as well as among parents teachers and especially the children themselves. Because the individual states are unable to search beyond their own boundaries for abducted children, even those few states which have made child-snatching a felonious action are stymied on the location aspect of child-snatching.H.R.1290proposes use of the Federal Parent Locator Service in this respect, and (based largely on the reported success by the State of California, which mandates use of its state PLS in child-snatchings) we are very hopeful that the FPLS would have a similar rate of success. However, going back to our fictitious parent who has finally obtained (let's be generous) a state felony warrant for the abducting parent. Unless that parent was awarded child support and lives in California, he or she will now have to find the abductor and child. Alone. At great expense [illegible] the search will probably, statistically, be a failure. Let's just make this a very bright and determined parent who decides to try for federal intervention. Is it possible? Yes. Is it likely? No. Why? What enables the federal machinery to swing into action in one case, and not in another? Who makes those decisions, and on what bases?

First, it must be clearly understood that in the handful of cases the U.S. Department of Justice has investigated in the past few years, the charges were not kidnapping. As explained above, the current federal law specifically exempts parents from prosecution under this title. However, Justice does have the authority to put out a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. Aha! This sounds like the perfect solution to the sad, broke and exhausted "victim" parent. But again, there is red tape enough to choke a horse: there are "requirements" before Justice will issue a UFAP in a child-snatching case. There must be a state felony warrant against the abductor (we've already discussed the likelihood of obtaining a warrant of any kind); the home state must be willing to extradite the abductor (an expense most states are loathe to guarantee); it must be shown that the abductor has left the original state (which is hard to prove if you don't know where the abductor is); and it must be shown that the child is in real physical or moral danger (very hard to prove without having the child and his or her situation evident). So much for the federal UFAP — and thus the use of the FBI to search for the child. So where does a parent turn?

Our organization has existed primarily as a clearinghouse of information on the child-snatching issue. We have been contacted by more than three hundred Congresspersons and Senators in the past three years for assistance and information due to constituents' concern and involvement with child-snatching problems. These Members of Congress have tried to assist these victim parents in many and various way, and their efforts on behalf of their constituents is to be commended. However, as all of these concerned national leaders have found, to their dismay, there is no help for these families. There is neither a locating agency, nor prosecuting system, nor social welfare organization, which can assist.

Each child-snatching case is unique, but there are underlying similarities in the thousands of cases in our files that are quite significant. The chief similarities are that in nearly every case, the abducting parent takes the child out of state; in the majority of cases the parents are separated but no court custody award had been made prior to the abduction; the average abducted child is three to seven years of age; usually the victim parent is unable to obtain a state felony warrant (or even a misdemeanor warrant) against the abducting parent.

When we put these factors together, we reach a very disturbing conclusion: thousands of helpless young children are being abducted across state lines and concealed by parents who have little fear of being found or prosecuted.

The burden of location is left entirely to the "victim" parent — and a heavy burden it is. In checking our files, we find that it is not unusual for a parent to spend $10-15,000 per year on detective and legal fees — and to still have no real clue as to the whereabouts of his or her child. Bear in mind that most of these parents will not find their children.

But the truly disturbing element in these cases are the children themselves — the "prizes" in the adult game of abduct-and-conceal. Usually taken during visitation or from a school, day care center or babysitter, they find themselves suddenly uprooted from their small world and thrust into very confusing situations. Our records indicate that most abductors stay on the move, often moving several times a year. The child does not get a chance to establish relationships in one community before being placed into a totally new environment. This fragmented lifestyle eventually teaches the child not to form friendships or get involved in his community — indeed, the child has no community.

Few cases of child-snatching have "happy endings" in which a child is returned to his or her original environment; and the problems we have seen as direct results of child-snatching are very disturbing. Most of these children have required psychiatric therapy because of disorientation and confusion; often the children are far behind in school; most have been told that the parent left behind died, or "doesn't love you anymore." Sometimes they have been told that the other parent will hurt or kill them, and that they should run and scream if they ever see them! It is obvious to us that these children are taken, not out of great love for the child, but to hurt the other parent.

That the child's welfare is of little concern to an abducting parent is evident in the fact that many children are taken at gunpoint or in violent confrontations in public places such as shopping centers; sometimes they are thrown into trunks of cars for the "getaway," or grabbed off the streets into speeding cars. These are not the actions of loving, mature parents concerned with the welfare of their children. Another indication of the vicious nature of these acts is the not-uncommon harassment of the victim parent by the abductor — calls and letters stating "You'll never catch me," "You'll never see the children again," et cetera. Often these messages are sent on Mother's or Father's Day, at Christmas, on the child's birthday, et cetera. It is clear to us that this kind of motivation is not in the best interest of the child.

We would like to illustrate three cases in which children were found in the past year, 1979. Hopefully, these cases will illustrate why we feel that education of the public and of persons in law enforcement, as well as of judges and social workers, is imperative.

Stacey Duncan was at her bus stop on 8 May 1979. When this seven-year-old was snatched by her father, it took her mother sixteen days to get California to issue a felony warrant. It took much longer to find Stacey — three months. Stacey was not found by a private detective, or through the state Parent Locator Service.

Stacey was found in a hospital. In a letter to CRI, Stacey's mother told us, "We were notified on the 12th of August that a little girl by the name of Connie West had been admitted into a Mississippi hospital on the 7th of August that could possibly be Stacey. Nineteen hours later, I was crying and praying for my little girl in an intensive care unit. She had been severely beaten and burned about her tiny body. She had to have a portion of her brain removed to save her life. The doctors still had no hope that she'd live. She had been in a coma but started coming out of it when I arrived. After a second brain surgery and a tracheostomy, Stacey is now off the critical list and in the hospital at home in California." In a subsequent newspaper article, it was reported that "Blows to Stacey caused extensive brain damage, requiring surgery that doctors believe will severely impair her intellect, sight and muscular control for the rest of her life." In a further letter to us in November, Stacey's mother said, "The Stacey we once loved is gone forever but the new Stacey is even more special to us. All those months we never lost our faith in God. He answered our prayers and brought her home. He's been showing us one miracle after another. She's now in a rehabilitation hospital and we're hoping she'll be home soon. She's been doing what doctors said was impossible."

This is the kind of situation that makes up the nightmares of parents victimized by child-snatching -- wondering whether a child will ever be found, or in what kind of condition.

My own case involves my son, Mason, now ten years old. When Mason was 4½, his mother (who had custody) disappeared with him, in June of 1974. Because I was not the custodial parent — and even though a court order had been violated — there was no warrant to be had. Because I didn't know my former wife's address, I couldn't even get a contempt-of-court bench warrant! So Mason got placed on the missing-persons list. Using all the information we had available, my family and I searched. We checked with his day care center, his pediatrician, neighbors. No clues anywhere. I hired a total of four private detectives over the years to try to find my son. Because of the publicity of CRI, I got a lot of "false leads," telling me Mason was in Texas, California, Kansas, Canada, Utah. We know now that Mason was in Atlanta, Georgia; St. Paul, Minnesota; Brighton, Boston and Worcester, Massachusetts; and Monsey, New York. At the time Mason was taken, he was forced to undergo a complete change in lifestyle — his mother had gone underground in a very common way: linking into a sub-culture which would protect her and permit her to keep her child as long as she followed their rules. Suddenly, this little boy who had been used to racially-mixed neighborhoods, who loved Big Macs, and who loved everyone he met — suddenly this child was thrust into an ultra-orthodox Jewish community, where he was taught to shun everyone who didn't look like him, dress like him, eat like him, think like him.

It pains me when Mason talks to me now, and I see and hear the prejudice and elitest self-esteem he has learned. The day I found him, although he recognized me, he wouldn't admit it because he thought the rabbis didn't want him to know me. We have chuckled over that incident recently, but at the time I was devastated to think my son didn't recognize me. Mason confided to me this past summer that the rabbis had told him that God had made black people black so that others could recognize them immediately as "bad." I was appalled. This racism was even more clearly demonstrated when Mason came to visit during his December school break. My step-son, eleven, asked Mason what he thought of the hostage situation in Iran.

Mason said he hadn't heard much about it, and didn't think of it. Quinn gave his limited version of what was happening, and finished with, "Don't you think every American should be concerned and care about them?" Mason's reply was, "Are they Jewish?" It was obvious that he was willing to worry if they were Jewish, but if not, he couldn't care less.

The Rockland County Family Court in New York decided that Mason, since he is "used to" the ultra-orthodox lifestyle, should remain with his mother and visit with me and my new family on specific occassions. It hasn't worked too smoothly yet, but we are hopeful that as time wears on, some of the problems will get ironed out. In the meantime, although the court order requires it, Mason is getting no psychiatric or psychological counselling; I only connect on the telephone about 1/3 of the time; and my son is still being taught that I am not a good person. Finding a child is no guarantee that everything will be fine.

Indeed, according to a newspaper article from the Casper Star-Tribune of 3 December 1979, "The body of Christine Sutherland was found floating in the North Platte River near Glenrock early Sunday morning. The 9-year-old girl was abducted from her Casper home early Sept. 16. Several duck hunters spotted her clothed body floating in the river just below the Dave Johnston Power Plant, said Jim Johnson, a Converse Courty undersheriff." When Christine disappeared, a child stealing warrant was issued.

There are those who claim that this is a problem that states can and should deal with on their own. Our response to this idea is an emphatic, "It can't be done." Even in states such as California and Wyoming, which have made a concerted effort to stem the tide of child-snatchings, there are no real resources available for in-depth searches. In December of 1976 CRI contacted every State's Attorney General in the U.S.A., requesting information on current child-snatching laws. The following excerpts from some of their responses indicate the inability of individual states to cope with the child-snatching problem:

Alaska:

"District Attorneys in Alaska currently do not prosecute for child stealing . . . because of the domestic nature of the offense. We encourage the efforts of your organization."

District of Columbia:

"The District of Columbia laws do not specifically proscribe childstealing. Childstealing can only be reached indirectly, e.g., through contempt proceedings . . . ."

Delaware:

"In practice, prosecution . . . is rare (estimated three cases yearly) for several reasons. First, a custody order must have been obtained . . . without an adjudication, the Family Court is powerless to act. Second, *when a child is taken out of state . . . in most circumstances jurisdictional problems prevent return*." (Emphasis added)

Iowa:

"Concerning this problem . . . from a general standpoint I can assure you that it is one of major proportion. The occurence of the problem in this state is widespread. . . .

"I receive an average of one or two calls per month . . . from broken hearted and/or outraged parents who have been victimized by these abductions and have suggested to each and every one of them that *the only solution that I can foresee as being efficacious would be federal legislation so as to involve investigatory personnel at the national level* . . . *(T)he majority of these cases involve the crossing of states lines and, therefore, state legislation in the field is oft-times meaningless*.

"(F)oreign jurisdictions do not honor a custodial award . . . from another state. All too often — which is to say in most cases — the foreign state will make its own determination . . . .

"It seems grossly unfair to me . . . to permit a non-custodial parent to 'abduct' a child . . . take the child to a foreign state, and force the custodial parent to litigate anew the issue of custody . . . ."(Emphasis added)

Kentucky:

"Kentucky . . . does not keep statistics . . . but does recognize custodial interference to be a problem, *especially in those instances where the . . . party absconds with the child to another* state."(Emphasis added)

Montana:

"We would agree with you that this has become a serious problem nationwide."

Nevada:

"In 1975 the Nevada legislature added a new section . . . which provides: 'Every person . . . who . . . detains, conceals or removes (a) child from a parent . . . is guilty of a misdemeanor.'
"To my knowledge, no one has been prosecuted under this provision since its enactment."

New Hampshire:

" . . . (A) proceeding for contempt is the only method in New Hampshire by which to resolve this problem and that as I am sure you are aware does not customarily allow extradition."

New Mexico:

"My answer is forced to be in the negative; at the present time New Mexico does not have a statute which addresses this problem."

Even the states which have made every effort to protect children from child-snatching are unable to do much once the child is taken out of state. Even after filing a state felony warrant and entering it on the NCIC, the abducting parent is rarely found. If by some fluke the child is located, he or she has usually been with the abducting parent for a substantial length of time, and there is a tendency to favor the "local yokel," even though that parent wrongfully brought the child into the jurisdiction. It is at best a sad comment on our times that our judicial system allows a thief to keep what he has stolen.

One major legal obstacle would be eliminated if the child-snatcher could be located before having the opportunity to establish jurisdiction in a new state or, as in my own case, before the child has become "accustomed" to the new lifestyle.

In those rare instances in which the child is located and returned (either through the courts or, more commonly, by re-snatching) there is no guarantee that it won't happen again. We estimate that roughly one fifth of the cases in our files involve multiple abductions.

Our concern today is that Congress now has a very logical and clear-cut opportunity to eliminate the loophole in the current federal kidnap statute which allows an estimated 100,000 children annually to be abducted and concealed. For years, our Members (among them thousands of child-snatching and child restraint victims) have looked to Congress for a clear, meaningful and compassionate solution to the plight of the thousands of children placed in these untenable positions each year. It is our sincere hope that this opportunity for the Senate to act for protection of children and family unity will be given the in-depth consideration it so justly deserves.

We cannot stress too strongly that child-snatching and child restraint are clearly abusive actions. In the small town of Tishomingo, Oklahoma in 1976, three-year-old Cody Cain was killed when his father snatched him and the speeding car overturned in flight. Cody's father died the following day.

Although we are often asked how we could intend that parents be prosecuted for taking their children out of love, quite frankly we have never once found a case in which a child was restrained or abducted which has bettered the child's conditions. To the contrary, these children are taken from what they know as "home" and are forced to live like fugitives, usually moving frequently, and often having to adjust to new names in the abducting parent's attempts to remain unfound. If love is the parent's true motive, he or she would find a way to work within the system for the child's best interest.

There is an abundance of psychiatric evidence that parental deprivation is emotionally crippling. Knowing that Congress has supported so many programs to improve the conditions of children in the United States, and the true concern you all feel for children in single-parent-home situations, we feel confidant that you will give support to the Parental Kidnapping Prevention Act of 1979. CRI made proposals along these lines as far back as the summer of 1975, and we are delighted to have S.105 and H.R.1290 before Congress.

There are a few reservations we have about the Senate version of the Act (S.105) which we would like to express and explain here.

First, S.105 addresses only those cases of child-snatching and child restraint in which a custody order was violated. This is of great concern to us for two reasons: first, because over 70% of the cases in our files occur prior to issuance of a custody award, and second, because it requires a federal agency to determine whether a custody order is valid and binding. It has been our impression that the federal government does not wish to become involved in making or enforcing custody orders, and essentially that is what S.105 will require. CRI therefore supports the language of H.R.1290.

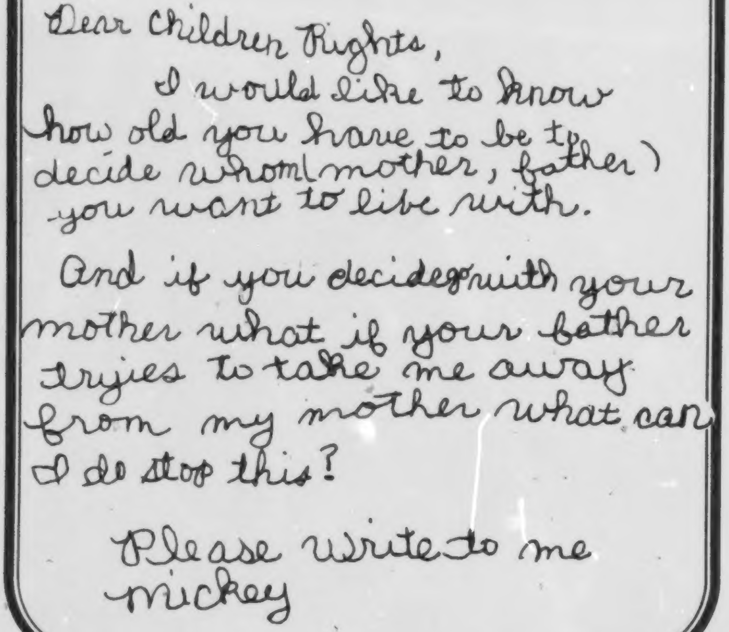
Additionally, we feel that consistency and uniformity in the enforcement of custody decrees is essential. This should be done as suggested inH.R.1290by including a section under Title 28, Chapter 115, Section 1738, which would call for full faith and credit in custody among the individual states. With the inclusion of this section, the common practice of "court shopping" should be greatly reduced. Coupled with the bill's criminal provisions, this provision would largely eliminate the temptation to abduct the child in hopes of a more favourable custody decision in a new state (even though this does not appear to be a major motive for child-snatching). It should be noted, however, that as presently written, the "home state" shall be the state in which the child has most recently lived for six consecutive months (or since birth, if under six months of age). Because it may realistically take more than six months to find the child, this could give jurisdiction to the fugitive state. We feel that this is in conflict with the basic intention of the Parental Kidnapping Prevention Act, and would like to suggest that this specific clause be changed to define that the "home state" shall be the state in which the child has most recently lived for six consecutive months, except that in the case of child-snatching or child restraint the "home state" shall be the state in which the child has most recently lived for six consecutive months prior to such abduction or restraint. In this way, we feel that parents and child alike benefit.

In the Spring 1977 issue of CRI's newsletter, "Our Greatest RESOURCE . . . Our Children," it was pointed out that what was needed to deal with the child-snatching problem was a multi-faceted proposal which would deal with custody jurisdiction and criminal prosecution for child-snatching. The Parental Kidnapping Prevention Act of 1979 does just that; we hope sincerely that the Senate will take this opportunity to resolve the very common and very complicated problems of child-snatching and child restraint.

We are appending copies of several articles which have appeared in "RESOURCE" over the past five years, which we hope will be of interest and assistance.

In conclusion, we would like to restate that the foregoing is a very brief description of some of the problems involved in child-snatching and child restraint cases, as well as a discussion of some of the far-reaching results that these actions have on children. Please bear in mind that thousands of families are adversely affected by these actions each year, and that the only logical solution to them is comprehensive federal legislation to guard against child-snatching and child restraint, and to facilitate the enforcement of state custody awards. But mostly, please keep in mind that while professionals and parents have a hard time untangling these issues, the real victims are the ones least able to deal with such problems — the children.

CRI receives letters from young children who are worried, even terrified, that they may be victims of child-snatching. In closing, we would like to submit one such letter — from a nine-year-old boy in Mississippi:



Dear Children Rights,

I would like to know how old you have to be to decide whom(mother, father) you want to libe with.

And if you decide with your mother what if your bather tryies to take me away from my mother what can I do stop this?

Please write to me
Mickey

OUR GREATEST
RESOURCE
...OUR CHILDREN

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# Federal Child-Snatching Bills

SENATE HEARINGS, S.105

The Senate Subcommittee on Criminal Justice held hearings on S.105, the Parental Kidnapping Act of 1979, on 30 January 1980. CRI held an informal reception the preceding evening, and most of the non-government witnesses attended. The hearing went well, and as soon as anything further develops in the Senate, we'll let you know. Among those testifying were CRI's President and Vice President (Arnold I Miller and Rae Gummel), victims Virginia Burt, Don Clevenger and Constance Grogan, family law specialists Henry H. Foster and Doris Jonas Freed, and Professor Russell Coombs.

HEARINGS SCHEDULED IN THE HOUSE

After last year's scheduling and then postponing of hearings by the House Subcommittee on Crime, we almost despaired of ever having the House companion of S.105(H.R.1290) heard. However, we have just been advised that hearings are now being planned for 24 June 1980. The main difference between the bills is that H.R.1290 would protect all children, not just those covered by a valid court order. Because of this, CRI strongly supports H.R.1290 and urges our Members to voice their opinions to their Congresspersons. The members of the Subcommittee are:

HOUSE SUBCOMMITTEE ON CRIME
Chairman: John Conyers, Jr., MI

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|---|---|---|---|
| • Hyde | IL | Kastenmeier | WI |
| • Gudger | NC | Don Edwards | CA |
| • Sensenbrenner | WI | Harold Volkmer | MO |
| Synar | OK | John Ashbrook | OH |

• co-sponsors of the Act

H.R.1290's sponsor is Representative Charles E. Bennett of Florida. The fifty-eight co-sponsors are:

| | | | |
|---|---|---|---|
| Buchanan | AL | Young | MO |
| Fazio | CA | Florio | NJ |
| Goldwater | CA | Thompson | NJ |
| Johnson | CA | Addabbo | NY |
| Lagomarsino | CA | Downey | NY |
| McCloskey | CA | Ferraro | NY |
| Mineta | CA | LaFalce | NY |
| Shroeder | CO | Mitchell | NY |
| McKinney | CT | Ottinger | NY |
| Moffett | CT | Peyser | NY |
| Fascell | FL | Rangel | NY |
| [illegible] | FL | Richmond | NY |
| Mica | FL | Fountain | NC |
| Evans | GA | Gudger | NC |
| Bedell | IA | Seiberling | OH |
| Hyde | IL | English | OK |
| Price | IL | AuCoin | OR |
| Fithian | IN | Duncan | OR |
| Hamilton | IN | Weaver | OR |
| Glickman | KS | Bailey | PA |
| Whittaker | KS | Dougherty | PA |
| Mazzoli | KY | Ertel | PA |
| Boland | MA | Murphy | PA |
| Long | MD | Fisher | VA |
| Spellman | MD | Whitehurst | VA |
| Frenzel | MN | Bonker | WA |
| Oberstar | MN | Aspin | WI |
| Cleveland | NH | Petri | WI |
| D'Amours | NH | Sensenbrenner | WI |

If any of these are your Congresspersons, let them know how you feel on the child-snatching issue! It has taken us five years to get this hearing, and it is very important that Congress realize how very badly needed legislation is in this area.

CRIMINAL CODE REWRITE

For years, Congress has been trying to update the language of the U.S. Criminal Code. That process may be finally coming to an end. In 1979, the Senate passed its version, which included what is now S.105, the Parental Kidnapping Act of 1979.

The U.S. House of Representatives is currently working on its version, H.R.6915, which includes the first two of the three parts of the Act. Briefly, the three parts are:

- full faith and credit for child custody orders;
- use of the Federal Parent Locator Service to locate abducting parents and stolen children; and
- criminal penalties for child restraint and concealment.

However, it should be noted that, if passed, the measure would not go into effect until January of 1984.

## UCCJA

Because we are constantly besieged by requests for information about the Uniform Child Custody Jurisdiction Act, we list here the States which have passed the Act:

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine
Maryland
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New York
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Vermont
Virginia
Washington
Wisconsin
Wyoming

Passage is also being considered by Alabama, Mississippi, Kentucky and Utah.

It is imperative that persons not be over-simple in their understanding of what the Act does; we get a lot of letters from angry parents who don't understand why their order wasn't upheld in a state which has passed the Act. These are very complicated legal technicalities, and if you have questions along these lines, you should consult your attorney.

## INTERNATIONAL TASK FORCE

In what could be a major step forward on the international level, the Special Commission on Child Abduction of the Hague Conference will meet in the fall. CRI was asked to submit a technial paper by the U.S. State Department's U.S. Delegation to the Conference last year, and we have been closely watching the progress of this effort.

Basically, the final product would be a treaty between the twenty-plus subscribing countries, which would assist in the return of children snatched across international borders. Needless to say, this would be a major victory for children!

## Furthermore . . .

As you all know, CRI is a national non-profit organization seeking a solution to the problems of child-snatching and child restraint. The two issues are at least emotionally abusive to children, and create a traumatic world for them which should be avoided.

Although the reasons for child abductions vary from case to case, the similarities are very significant:

- children are taken out of state;
- no custody determination has been made prior to abduction in most instances;
- average ages of children abducted are 2-7 years old;
- children are concealed from one parent by the other.

There are, of course, physical dangers in child-snatching situations; the press is usually quick to pick up a story which involves children taken at gunpoint or in a violent scene. There are significant numbers of deaths, abuses and other physical trauma. However, for the most part the effects of child-snatching are not easily seen, like scars and bruises, but are inside, and difficult to heal.

A small percentage of the children in our files have been found, to the joy of us all. However, the finding of those children has not been the end of the problems. It is common among these children for psychiatric and/or psychological counselling to be needed. These children very often have no sense of community because of frequent moves and admonishments and instructions not to talk about their past. They are often behind in school — have difficulty in making friends — and don't trust anybody.

And what are these children told about the parent left behind? Depending on the age of the child and other factors, the story may vary, but there are three basic probabilities:

- that the parent died;
- that the parent is trying to find them to do some harm to either the abductor, the child, or both; or
- that the parent doesn't love them or want to see them any more.

And how have the States dealt with with this problem? Some — indeed, many — have attempted to make laws to deter or prevent child-snatchings; but they have no force beyond state lines and are therefore ineffective. Indeed, in our testimony at the Senate hearings on 30 January, we quoted letters from nine states in which it was affirmed that state law was ineffective.

We truly feel that it is imperative that a federal law be passed which will deal with child-snatching from a broad base — and we feel that the current legislation (S.105 and H.R. 1290) do — by providing the following:

- full faith and credit for custody orders;
- use of the Federal Parent Locator Service to assist in child-snatching cases; and
- criminal penalties for the acts of child-snatching and child restraint.

Most of our letters come from adults — parents, attorneys, prosecutors, legislators, judges, educators — but some of our mail is from children. Children who are afraid of being abducted by one of their parents. Children who have met children who have had this experience, and fear it for themselves. We do our best to assure these children that we — and you — are trying hard to get them the protection they want and need. But we must try harder, for each day that goes by, more children fall into this legal trapdoor, and each day that happens is a day we have failed our children.

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VOL. 5, NO. 4 © 1979 CHILDREN'S RIGHTS, INC. FALL 1979

# Federal Child-Snatching Bills

You will all be glad to learn that the U.S. Senate Subcommittee on Criminal Justice has tentatively scheduled hearings on S.105 (The Parental Kidnapping ACT) for late January 1980!! If you want to have input, contact the members of the Subcommittee:

SENATE SUBCOMMITTEE ON CRIMINAL JUSTICE

Chairman: Joseph Biden, Jr., DE

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| • Edward Kennedy | MA | • Charles McC Mathias | MD | John Culver | IA | Thad Cochran | MS |
| • Dennis DeConcini | AZ | Paul Laxalt | NV | Patrick Leahy | VT | Orrin Hatch | UT |

• co-sponsors of the Act.

The sponsor of S.105 is Senator Malcolm Wallop of Wyoming. The twenty-two co-sponsors are:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Kennedy | MA | McGovern | SD | Moynihan | NY | Young | ND |
| Bumpers | AR | Levin | MI | Thurmond | SC | Domenici | NM |
| Stevens | AK | Riegle | MI | Hollings | SC | Schmitt | NM |
| Inouye | HI | DeConcini | AZ | Heinz | PA | Simpson | WY |
| Mathias | MD | Hayakawa | CA | Durenberger | MN | Johnston | LA |
| | | Cranston | CA | Randolph | WV | | |

In the U.S. House of Representatives, H.R.1290 (The Parental Kidnapping Act) is still collecting cobwebs in the Subcommittee on Crime, chaired by John Conyers, Jr. of Michigan. Mr. Conyers has still failed to comprehend the serious nature of the problems of child-snatching and child restraint.

To urge hearings on H.R.1290 in the near future, WRITE — CALL — TELEGRAM John Conyers, Jr., as well as the members of the Subcommittee:

HOUSE SUBCOMMITTEE ON CRIME

Chairman: John Conyers, Jr., MI

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| • Henry Hyde | IL | • James Sensenbrenner | WI | Robert Kastenmeier | WI | Harold Volkmer | MO |
| • Lamar Gudger | NC | Michael Lynn Synar | OK | Don Edwards | CA | John Ashbrook | OH |

• co-sponsors of the Act.

The sponsor of H.R.1290 is Representative Charles E. Bennett of Florida. The fifty-four co-sponsors for the bill are:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Addabbo | NY | Lagomarsino | CA | Mazzoli | KY | AuCoin | OR |
| Rangel | NY | Goldwater | CA | D'Amours | NH | Duncan | OR |
| LaFalce | NY | McCloskey | CA | Cleveland | NH | Boland | MA |
| Richmond | NY | Johnson | CA | Florio | NJ | Young | MO |
| Ottinger | NY | Fazio | CA | Thompson | NJ | Seiberling | OH |
| Ferraro | NY | Mineta | CA | Gudger | NC | Oberstar | MN |
| Peyser | NY | McKinney | CT | Fountain | NC | Hyde | IL |
| Mitchell | NY | Long | MD | Fisher | VA | Price | IL |
| Downey | NY | Spellman | MD | Whitehurst | VA | Whittaker | KS |
| Buchanan | AL | Hamilton | IN | Bailey | PA | Glickman | KS |
| Evans | GA | Fithian | IN | Ertel | PA | English | OK |
| Schroeder | CO | Fascell | FL | Murphy | PA | Aspin | WI |
| Bedell | IA | Hutto | FL | Dougherty | PA | Sensenbrenner | WI |
| | | Mica | FL | Bonker | WA | | |

If any of these are your Senators or Congresspersons, let them know how you feel on the child-snatching issue!

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VOL.5, NO.3 © 1979 CHILDREN'S RIGHTS, INC. SUMMER 1979

# Federal Child-Snatching Bills

As many of you probably already know, the House Subcommittee on Crime was scheduled to hold hearings on H.R.1290 (the House version of the Parental Kidnapping Prevention Act of 1979) on 27 June 1979. CRI submitted a list of experts who would be willing to testify. However, the Subcommittee has postponed hearings on this bill indefinitely. There was some discussion of holding joint subcommittee hearings on the issue; at present, there is no hearing scheduled at all.

The final decision to hold hearings rests with the Chairman - John Conyers, Jr., of Detroit, Michigan. He has closed his mind and heart to the 100,000 children victimized by child-snatching each year. Repeatedly, Mr. Conyers has demonstrated an ignorance of the problem, as well as a lack of concern for American children. CRI finds this an astonishing response from a Congressperson during this International Year of the Child.

If you wish to make yourself heard: WRITE — CALL — SEND TELEGRAMS to John Conyers, Jr., as well as the members of the Subcommittee:

| House Subcommittee on Crime | | Chairman: John Conyers, Jr. | MI |
|---|---|---|---|
| Don Edwards | CA | Harold Volkmer | MO |
| Michael Lynn Synar | OK | John Ashbrook | OH |
| *Henry Hyde | IL | *James Sensenbrenner | WI |
| *Lamar Gudger | NC | Robert Kastenmeier | WI |

You may wish to contact the subcommittee advisors as to why this issue is not being pressed; if so, get in touch with the two following gentlemen:

Hayden Gregory, Esq.
Subcommittee on Crime
U.S. House of Representatives
Washington DC 20515

Frank Dunbaugh, Esq.
Subcommittee on Crime
U.S. House of Representatives
Washington DC 20515

or call the Subcommittee direct at 202/225-1695.

The Sponsor of H.R.1290 is Charles E. Bennett of Florida; the co-sponsors are the following Congresspersons:

| | | | | | |
|---|---|---|---|---|---|
| Buchanan | ALA | Lagomarsino | CAL | Fascell | FLA |
| Evans | GA | Hamilton | IND | Hutto | " |
| Shroeder | COL | Bedell | IA | Mica | " |
| Hyde | ILL | Mazzoli | KEN | Whittaker | KAN |
| Price | " | Boland | MAS | Glickman | " |
| Long | MD | Young | MO | AuCoin | ORE |
| Spellman | " | Seiberling | OH | Duncan | " |
| Addabbo | NY | LaFalce | NY | Ottinger | NY |
| Rangel | " | Richmond | " | D'Amours | NH |

co-sponsors of H.R.1290, continued:

| | | | | | |
|---|---|---|---|---|---|
| Florio | NJ | Gudger | NC | Bailey | PENN |
| Thompson | " | Fountain | " | Ertel | " |
| Sensenbrenner | WIS | Fisher | VA | Murphy | " |
| | | Whitehurst | " | | |

There have still been no hearings scheduled on S.105, the Senate version of the Parental Kidnapping Prevention Act of 1979; this bill is presently in the Senate Subcommittee on Criminal Justice, the members of which are:

Senate Subcommittee on Criminal Justice

| | | | |
|---|---|---|---|
| | | Chairman, Joseph Biden, Jr. | DE |
| *Edward Kennedy | MA | John Culver | IA |
| *Dennis DeConcini | AZ | Patrick Leahy | VT |
| *Charles McC Mathias | MD | Thad Cochran | MS |
| Paul Laxalt | NV | Orrin Hatch | UT |

In the Senate, the bill's sponsor is Senator Malcolm Wallop of Wyoming; the co-sponsors of S.105 are:

| | | | | | |
|---|---|---|---|---|---|
| Kennedy | MAS | McGovern | SD | DeConcini | ARIZ |
| Moynihan | NY | Young | ND | Heinz | PENN |
| Bumpers | ALSK | Inouye | HAW | Simpson | WYOM |
| Cranston | CAL | Levin | MICH | Domenici | NMEX |
| Hayakawa | " | Riegle | " | Schmitt | " |
| | | Thurmond | SCAR | | |

* co-sponsors of the Act who are also on the responsible sub-committees.

If any of these co-sponsors are your Congresspersons or Senators, thank them for supporting this legislation. Let them know how you feel on the child-snatching issue — show them your support.

We feel very strongly that these bills should be passed in 1979 — the International Year of the Child. Child-snatching and child restraint are, our data shows, increasing at an incredible rate, not only in the U.S., but all over the world. It is imperative that hearings be scheduled immediately!!

# INTERNATIONAL TASK FORCE

In the past year, we have had an increasing number of children taken out of the U.S. — to the Middle East, Western Europe, South America, Canada, Mexico and the Far East. Many of you have provided us with wonderful contacts for parents whose children are abducted to foreign countries, but we will always need to know more! It would be greatly appreciated if those of you who have had to deal with foreign cases would take a few moments to jot down information for us, using the following format, so that we can compile an ITF Handbook similar to the Handbook discussed above. Basically, we need to know:

Name of Agency or Individual
Address and Telephone Number
Contact Person (if an agency)
Type of assistance provided
Your appraisal (Good, Fair, Worthless)

If you could provide this information for foreign social agencies, attorneys, Embassies — anyone who could help (or hinder!) a parent in that country, it would help dozens of parents dealing with cases in the area you are familiar with.

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VOL.5, NO.2 COPYRIGHT CHILDREN'S RIGHTS, INC. SPRING 1979

# Federal Child-Snatching Bills

The Parental Kidnapping Prevention Act of 1979 was introduced in both houses of Congress on 23 January 1979. In the Senate, the measure (S.105) is sponsored by Senator Malcolm Wallop of Wyoming; its House of Representatives companion bill (H.R.1290) is sponsored by Congressman Charles E. Bennett of Florida. CRI has been working on this legislation for years, and testified for Mr. Wallop's legislation in 1978; we have just learned that the House Subcommittee on Crime plans to hold initial hearings on H.R.1290 in late June. The Senate has not scheduled hearings for 1979 yet. These bills are nearly identical, and provide for:

- Full faith and credit in custody matters, based on the American Bar Association's Uniform Child Custody Jurisdiction Act;
- Use of the national Parent Locator Service to trace abducting parents and children (the PLS now locates parents for non-support);
- Criminal provisions for the 7-day concealment or 30-day restraint of a child. This provision contains fines of $10,000 and possible prison sentences for these offenses.

CRI feels that the Parental Kidnapping Prevention Act is a giant step toward relieving the traumas created by child-snatching and child restraint. We urge all our Members and supporters to write their Congressperson and Senators, urging their support for these bills.

In the Senate, the bill is before the Senate Judiciary Committee, chaired by Senator Edward Kennedy of Massachusetts, who is a co-sponsor of S.105. The House bill, H.R.1290, is before the House Judiciary Committee, Subcommittee on Crime, which is chaired by Congressman John Conyers, Jr. of Michigan. We urge letters to these gentlemen, as well as to the members of their committees.

All U.S. Senators may be addressed:

The Honourable_______________
United States Senate
Washington DC 20510

All Members of the House may be addressed:

The Honourable_______________
U.S. House of Representatives
Washington DC 20515

Below is a listing of the members of the House Judiciary Committee and the Subcommittee on Crime. It is particularly important that you write to these persons NOW!! Because the subcommittee will hold hearings in late June, it is imperative that we have proof of public concern with these issues.

## HOUSE JUDICIARY COMMITTEE

Peter W. Rodino, Jr., N.J., chairman
Jack Brooks, Tex.
Robert W. Kastenmeier, Wis.
Don Edwards, Calif.
John Conyers, Jr., Mich.
• John F. Seiberling, Ohio
George E. Danielson, Calif.
Robert F. Drinan, Mass.
Elizabeth Holtzman, N.Y.
• Romano L. Mazzoli, Ky.
William J. Hughes, N.J.
Sam B. Hall, Jr., Tex.
• Lamar Gudger, N.C.
Harold L. Volkmer, Mo.
Herbert E. Harris II, Va.
Michael Lynn Synar, Okla.

Robert T. Matsui, Calif.
Abner J. Mikva, Ill.
Michael D. Barnes, Md.
Richard C. Shelby, Ala.

*Robert McClory, Ill.*
*Tom Railsback, Ill.*
*Hamilton Fish, Jr., N.Y.*
*M. Caldwell Butler, Va.*
*Carlos J. Moorhead, Calif.*
*John M. Ashbrook, Ohio*
• *Henry J. Hyde, Ill.*
*Thomas N. Kindness, Ohio*
*Harold S. Sawyer, Mich.*
*Dan Lungren, Calif.*
• *F. James Sensenbrenner, Jr., Wis.*

## Subcommittee on Crime

John Conyers, Jr., Mich., chairman
Robert W. Kastenmeier, Wis.
Don Edwards, Calif.
Lamar Gudger, N.C.
Harold L. Volkmer, Mo.
Michael Lynn Synar, Okla.

*John M. Ashbrook, Ohio*
*Henry J. Hyde, Ill.*
*F. James Sensenbrenner, Jr., Mich.*

• Co-sponsors of H.R.1290, on the Committee.

Co-sponsors of House Bill H.R.1290:

Joseph Addabbo(NY)
Edward Boland (MA)
Norman D'Amours(NH)
Dante Fascell (FL)
Joseph Fisher (VA)
James Florio (NJ)
Earl Hutto (FL)
Austin Murphy (PA)
Frank Thompson,Jr.(NJ)
Lamar Gudger (NC)
Dan Mica (FL)
Allen Ertel (PA)

Billy Lee Evans(GA)
Romano Mazzoli(KY)
L. H. Fountain (NC)
Berkley Bedell (IA)
Don Bailey (PA)
Clarence Long (MD)
Charles Rangel (NY)
Robert Lagomarsino(CA)
G. Wm. Whitehurst (VA)
Bob Whittaker (KS)
John Buchanan (AL)
Henry Hyde (IL)

F. James Sensenbrenner,Jr(WI)
John J. LaFalce (NY)
Lee Hamilton (IN)
Dan Glickman (KS)
Les AuCoin (OR)
Patricia Schroeder (CO)
John Seiberling (OH)
Richard Ottinger (NY)
Robert Young (MO)
Frederick Richmond (NY)
Robert Duncan (OR)
Melvin Price (IL)

Co-Sponsors of Senate bill S.105:

Edward Kennedy (MA)
George McGovern (SD)
Alan Cranston (CA)
Donald Riegle (MI)
Dennis DeConcini (AZ)
Carl Levin (MI)

Daniel Patrick Moynihan (NY)
Milton Young (ND)
John Heinz (PA)
Dale Bumpers (AK)
Daniel Inouye (HI)

Strom Thurmond (SC)
Alan Simpson (WY)
S. I. Hayakawa (CA)
Harrison Schmitt (NM)
Pete Domenici (NM)

## I. Y. C.

CRI is proud to have been appointed to the National Organizations' Advisory Council to the National Commission on the International Year of the Child. Through the efforts of CRI, thirteen members of Congress have asked the Commission to study the issue of child-snatching for inclusion in the final Commission Report to President Carter.

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VOL. 5, NO. 1 COPYRIGHT CHILDREN'S RIGHTS, INC. 1979 WINTER 1979

## CRI'S POSITION ON PROPOSED CHANGES TO THE WALLOP AMENDMENT

Our organization is, and has been, the only national organization to deal specifically with the problems of child-snatching and child restraint. Our files contain thousands of cases in these categories, and we feel a great responsibility to our members in discussing these issues with legislators on both state and national levels.

After five years of trying to resolve these problems through the legislation of a very concerned Congressman, Charles E. Bennett, the news that Senators Wallop, Kennedy, Thurmond and McGovern had introduced child-snatching legislation (now widely referred to as "the Wallop Amendment") excited families all across the country. We at CRI headquarters have spent the past several months explaining the intricacies of the legislative system to these parents, whose faith in the ability and willingness of Congress has been reaffirmed time and again by our organization.

Congress, in this new session, will have an opportunity to remedy one of the most distressing situations in the country — a situation described by Albert J. Solnit, M.D., Director of the Yale Child Study Center, as one in which "children can be plunged into a despair so deep that it causes persistent fearfulness and distrust."

It is the hope of our organization and the thousands of families around the country which we represent, that the Wallop Amendment as presented in the Congressional Record of 25 January 1978 will be introduced as a separate bill in both the Senate and the House in the 96th Congress, First Session.

Several points must be kept in sight at all times in discussing solutions to the child-snatching and child restraint problems:

- these actions are psychologically (and sometimes physically) abusive.
- the vast majority of these actions (over 70% of the cases in our files) occur prior to custody determinations.
- the Justice Department has consistently opposed any federal government involvement in making custody determinations.

With these points in mind, let us now examine the original Amendment and the proposed changes.

### Civil Provisions

Basically, these provisions follow the Uniform Child Custody Jurisdiction Act, which CRI has always supported. To date, twenty-eight states have adopted the Act, and we are proud of the role our organization has played in supporting passage of the Act in many states. CRI feels that the definition of "home states" shound be modified, however, to require that, in instances of child-snatching and child restraint, the "home state" should be the one in which the child resided for the six-month period preceding such child-snatching or child restraint. Otherwise, the absence of an original custody order prior to such action may well leave an unnecessary loophole for parents who want to abduct their children.

The Amendment also provides for use of the Federal Parent Locater Service in child-snatching cases, which should take the burden of most of the investigative work from the shoulders of the F.B.I.

### Criminal Provisions

In the original Amendment, the definition of "right of custody" can be paraphrased as follows:

> A person is guilty of an offense if he intentionally restrains his child in violation of any person's right of custody or visitation arising from:
> (A) a valid child custody determination (court order);
> (B) a valid written agreement (such as a separation agreement) between the child's parents or guardians; or
> (C) the relationship of parent and child, or guardian and ward, absent the circumstances set forth in (A) and (B) above.

CRI was instrumental in forming this language, and our membership is highly disturbed by the proposal to eliminate definitions (B) and (C). This proposal would cause there to be an offense only if a parent intentionally violates a valid custody decree. This is unacceptable under all three of the criteria stressed earlier, for the following reasons:

- the proposed change implies that only children covered by a custody decree are adversely affected, which is obviously and patently absurd. There has been more than ample evidence that child-snatching and child restraint are abusive — to any child, not just a child fortunate to have been under a court order at the time of such act.
- the proposed change is manifestly unjust and discriminatory, as it will, in practice limit access to legal remedy to less than 30% of the victims of these abusive actions. The inclusion of definitions (B) and (C) was deliberate, and the sole purpose of that inclusion was to guarantee that all victims would be eligible for assistance under the law. The blatant discrimination in the proposed change is precisely what the original Amendment tried to avoid, by spelling out any possible legal situations in which child-snatching and child restraint take place. The dilution of this language into a sugar-water political gesture of concern will be considered a Congressional failure by families victimized by these actions.
- while the Justice Department has adamantly opposed intervention in domestic disputes or custody determinations, this change would throw that Department into the thick of the imbroglio — requiring that Department to determine whether a custody order is valid and "entitled to enforcement pursuant to the provisions of 28 U.S.C. 1738A." This does not fit what the Justice Department has stated it would be willing to accept as its duties under this type of law.

Basically, then, we feel that the Wallop Amendment as originally stated in the Congressional Record of 25 January 1978 is the best, most viable solution to the problems of child-snatching and child restraint. We feel that the proposed change sanctioned by the staff of the Senate Judiciary Committee and the Justice Department are an affront to the intention of the Amendment's sponsors, unresponsive to the need for protecting children from these abusive actions, discriminatory against the majority of the victims of such actions, and in direct conflict with the oft-stated wishes of the Justice Department.

In the interest of finding a viable solution, and in the spirit of truly helping victims of these abusive actions, CRI hopes that the Wallop Amendment will be re-introduced in toto as originally set forth in the Congressional Record of 25 January 1978.

## UNIFORM CUSTODY

There are now 28 states which have adopted the Uniform Child Custody Jurisdiction Act, according to the National Conference of Commissioners on Uniform State Laws. We remind our members that UCCJA will not end child-snatching, though it will very likely cut down on "court shopping." The new list of adopting states is:

Alaska
Arizona
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Indiana
Iowa
Kansas
Louisiana
Maryland
Michigan
Minnesota
Missouri
Montana
New York
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
South Dakota
Wisconsin
Wyoming

## "RETURN OUR CHILDREN" NEWSLETTER

Mr. Harold Miltsch, a marketing specialist, has developed a direct mail campaign covering all schools in the U.S. and Canada. The purpose of the campaign will be to locate missing school-aged children. The cost of participating in the campaign is approximately $500 and there are no guarantees. For further information, please contact:

Harold Miltsch
1 Lamplighter Lane
Rochester NY 14616

716/ 663-3169

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VOL. 4, NO. 1 COPYRIGHT CHILDREN'S RIGHTS, INC., 1978 WINTER 1978

## THE SENATE/CURRENT LEGISLATION

The U. S. Senate recently passed the revised criminal code (S.1497), which includes Senator Wallop's amendment to the Kidnap Statute. This amendment would:

- increase the scope of the Parent Locator Service to provide information in cases of missing children;
- add a new "Restraint of a Minor" section, which would:
  - make abduction and concealment of a child a Federal Class B Misdemeanor, and
  - make restraint of a child without concealment a Federal Class C Misdemeanor;
- require that individual States honor previous custody awards by other States.

This is the most powerful and comprehensive piece of Federal legislation on child-snatching yet, and we support it whole-heartedly. Your support is needed too; don't let us down, write your Congresspersons and Senators today!!

The Wallop Amendment distinguishes between child-snatching and child restraint; explains how and when the FBI would become involved (based on CRI's 30/90 Day Proposal of December 1975); calls for the use of the Parent Locator Service for preliminary searching; and incorporates much of the American Bar Association's model for uniform custody.

To conclude the Senate activities, Senator George McGovern has introduced a twin to the Moss-Edwards bill in the House (H.R.988), which calls for full faith and credit between States in Custody awards.

## THE HOUSE/CURRENT LEGISLATION

In the past several months, a number of new bills have been introduced in the U.S. House of Representatives to deal with the child-snatching problem. We are very happy to see this interest in such a serious problem.

THE BENNETT BILL (H.R.762) is the original child-snatching legislation. It would:

- include parental abductions of children under the Federal Kidnap Statute, and
- provide child-snatching penalties of one year imprisonment and/or $1,000 fine.

THE KASTEN BILL (H.R.10493) would:
- include child-snatching under the Federal Kidnap Statute,
- require States to honor previous custody awards by other States, and
- provide child-snatching penalties of one year imprisonment and/or $5,000 fine.

THE SAWYER BILL (H.R.9478) would:
- include child-snatching in violation of a custody order under the Federal Kidnap Statute,
- include persuading a child to leave a parent in violation of a custody order under the Federal Kidnap Statute,
- provide penalties of one year imprisonment and/or $1,000 fine for first offenses, and
- provide penalties of two year's imprisonment and/or $2,000 fine for repeat offenses.

THE FISH BILL (H.R.9913) would:
- place State custody awards under the jurisdiction of Federal District Courts, so that if custody were violated, a Federal warrant could be issued.

THE MOSS BILL (H.R.988) would:
- require full faith and credit between States in custody awards.

All of these bills are in the Judiciary Committee of the U. S. House of Representatives, and at present none of them are scheduled for hearings.

In an effort to resolve the child-snatching problem, Congressman Fish circulated a letter to the other sponsors of child-snatching legislation in the House (all those listed above), seeking their signatures and calling for either individual hearings on their respective bills or joint hearings on the child-snatching issue. Four of the five Congressmen signed the letter (Congressman Moss declined to sign). The letter was then forwarded to the Chairmen of the subcommittees in which these bills are pending, i.e., John Conyers, Jr. (Subcommittee on Crime) and George E. Danielson (Subcommittee on Administrative Law). Congressman Danielson said he would hold hearings as soon as he gets an opening; as expected, Congressman Conyers has not replied.

There is no single House bill that really resolves the child-snatching issue. The Bennett and Kasten bills are the most promising. Our main objection to the Sawyer approach is that it would only be of assistance in those child-snatching cases where custody had been awarded prior to the taking of the child. Unfortunately, that only addresses about 30% of the cases. The Fish bill approaches the problem from a civil point of view, rather than a criminal one. It, like the Sawyer approach, addresses only the 30% of cases in which custody was awarded prior to the child-snatching. The U. S. Justice Department should not be directly involved with the problem of enforcing custody orders. As far as CRI is concerned, child-snatching is not a custody problem, but is actually a form of child abuse, and should be treated as a crime against the child.

We're hoping that Congressman Fish will remain as flexible towards solutions as the intent of his letter to the subcommittee chairmen implies.

The best solution, we believe, would be for the House Subcommittee on Criminal Justice (chaired by Congressman James R. Mann) to adopt the Wallop Amendment into the House version of the rewrite of the U. S. Criminal Code (H.R.6869). The Subcommittee on Criminal Justice is currently reviewing both H.R.6869 and the Senate version, S.1437 — CRI will be giving testimony on the child-snatching issue in early March. Wish us luck!!!

## CHILD-SNATCHING RESTRAINT

Child-snatching is a situation in which one parent abducts and conceals a child from the other parent.

Child restraint is a situation in which a child is kept away from ne parent, without the elements of abduction and concealment.

Although CRI has been predominantly concerned with child-snatching for the past three years, we have had huge numbers of calls and letters from parents who know where their children are, but are still legally helpless as far as being able to see or communicate with their children. We feel that the withholding of the child is extremely harmful, whether he is actually being concealed from the victim parent or not, and are therefore very happy that both child-snatching and child restraint are considered in the Wallop Amendment to S.1437.

This legislation resolves the problems of child-snatching and restraint, without being concerned with issues of custody, court orders, etc. These are issues that local courts should handle — they are not problems for the Federal Government to resolve.

As far as the child is concerned, he should not be burdened with the decisions of court orders or custodial rights. He has THE RIGHT TO KNOW AND LOVE BOTH PARENTS. When a parent snatches or restrains a child, the result is the same — the child is the loser. His need to express love for both parents is being ignored; he is being used as a pawn to spite the other parent; he loses his sense of community and friends. Parents engaging in these actions have managed to teach their children the very sad lesson that it is not worthwhile to trust adults. Reconstructing that trust and love is a long, hard road. Credit goes to those parents ho refuse to give up.

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## CHILD-SNATCHERS

Perhaps the most often-asked question about child-snatching is: "Who does it most often — the mother or the father?" The answer is simple enough on the surface — the father — but we must examine the issue further for a true explanation.

The social phenomenon of child-snatching occurs when a couple has decided to separate or divorce. As expected, emotions usually run high and rationale is quite low. The child would probably prefer no separation at all — unfortunately, it seldom works out that way, and the children are caught in the middle. They must find a way to love both parents without losing the love of either.

In most jurisdictions throughout the United States, mothers are awarded custody of the children more often; therefore, fathers (as the non-custodial parent) are more frequent child-snatchers at this time. We would like to explore some of the motives of the abducting parent:

- Loss of (or fear of losing) custody.
- Bitterness or anger at something the ex-spouse has said or done.
- Retaliation for denial of visitation.
- Difficulty in the adjustment of having to make child-support payments without having free access to the child.
- Resentment about being excluded from the decision-making process in the child's life and upbringing.

If the above motives come into play, the parent may give very little thought to the child's best interests, and it's at this point that we finally understand why parents snatch their children, and why fathers are now the more frequent snatchers. True, it's usually the father who does the taking, but it's really the non-custodial parent — not because he's the father, but because he is the parent most likely to lose in court.

BUT WHATEVER THE REASON, PARENTS SHOULD REALIZE THE EFFECT CHILD-SNATCHING WILL HAVE ON THEIR CHILDREN, AND TAKE ALL PRECAUTIONS TO AVOID THIS CRIME AGAINST THEIR LOVED ONES.

Many fathers' organizations are battling for equal rights in the courtroom in custody matters all around the United States. CRI supports the equal rights philosophy, but wants to caution its members on one major point: if through the years the domestic court judges equalize their custodial decisions between fathers and mothers, this will not change the status of child-snatching!! There will simply be as many mothers engaging in child-snatching as fathers. This is why we must understand that it is not "the father" but the non-custodial parent, the parent most likely to lose, who commits this crime against our children.

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## THE REAL SOLUTION

Child-snatching has many causes, and many "solutions" have been offered by people all around the country. Aside from many that are clearly unworkable (such as tattooing each child's social security number on his or her foot), three alternatives seem to be most widely talked about. In order to clarify these alternatives, and to answer the many questions you have raised about them, we will discuss (non-legally) all three right here and now!

#1. Uniform Custody. This refers to the Uniform Child Custody Jurisdiction Act, which has been adopted by the following eleven States: California, Colorado, Delaware, Hawaii, Maryland, Massachusetts, Michigan, North Dakota, Oregon, Wisconsin and Wyoming.

Uniform custody would (hopefully) end the increasingly common practice of "court shopping," in which a parent who lost custody in one State moves to another State and tries again. It is not uncommon to hear of children whose parents each have valid and legal custody in one or more States. Essentially, a State which had adopted uniform custody would refuse to accept jurisdiction in a custody issue in which another State had already made a decision. The parent seeking a change in custody would have to continue proceedings in the original State. In this way, one court would presumably have all the relevant facts and testimony. Many people believe that this would end child-snatching. However, it should be noted that uniform custody does not provide for verifying whether another State has already awarded custody, or for returning the child to the original State. Further, there is little evidence that child-snatchers seek legal custody in their new State — indeed, they seem to avoid doing anything that could provide a clue for the victimized parent. THUS, ALTHOUGH UNIFORM CUSTODY MIGHT WELL CUT DOWN ON COURT-SHOPPING, IT IS UNLIKELY THAT IT WOULD HAVE MUCH EFFECT ON CHILD-SNATCHING.

#2. Full Faith and Credit. Bills have been introduced in both Houses of Congress (H.R.988, by Congressmen Moss and Edwards, and S.797 by Senator McGovern) "to exercise the power of Congress under Article IV of the Constitution to declare the effect of certain State judiciary proceedings respecting the custody of children." Basically, this would provide that the decision of the first court must be upheld by courts in other States. This legislation complements the uniform custody concept, and would have a similar effect. Other than the shortcomings of uniform custody discussed above, there is another technical drawback: previously, full faith and credit has required States to uphold only final orders of other States' courts. Custody decrees are subject to modification in the best interest of the child, and are therefore generally not considered final orders. THEREFORE, IT IS UNLIKELY THAT CONGRESS WILL REQUIRE THE INDIVIDUAL STATES TO HONOR NON-FINAL DOMESTIC CUSTODY DECREES.

#3. Amend Kidnap Statute. A bill has been introduced by Congressman Bennett (H.R.762) which would amend the present Federal Kidnap Statute so that a parent would be held accountable for taking and concealing a child from the other parent. It would also provide for a modified penalty (one year imprisonment and/or $1,000 fine) for such parental kidnapers. By making child-snatching a Federal kidnap offense, the actual location of the parent and child would be possible — AN OBSTACLE NEITHER UNIFORM CUSTODY NOR FULL FAITH AND CREDIT PROVIDE SOLUTIONS FOR. Also, becuase it is amending an already-existing Federal law, it doesn't have the disadvantage of extending Federal intrusion into State matters; custody would still be decided and enforced by the States. THIS BILL WOULD PROVIDE FOR LOCATING THE PARENT AND CHILD, AND HOLDING THE ABDUCTOR ACCOUNTABLE FOR HIS/HER ACTIONS.

Perhaps what is needed legislatively is a combination of all three alternatives.

But the real solution is for parents to realize that child-snatching and court-shopping are temporary gains at best. As long as the attitude prevails that children are prizes to be won in a courtroom, nobody wins.

## A MESSAGE FROM THE PRESIDENT

On 25 March, CRI presented testimony for public hearings on child-snatching in Los Angeles County. I would like to present excerpts from that testimony as my message to victim parents and interested persons:

"We compliment your State for her effort to eliminate the trauma of child-snatching. California is the first State to pass comprehensive legislation on this issue, and we hope that others will soon follow her example.

"However, the fact still remains that sister States can disregard California warrants and requests for extradition, and can also disregard custody orders, choosing instead to grant custody to the parent now residing within their own jurisdiction. Our files are filled predominantly with parents who have been unsuccessful in locating their children and ex-spouses. These are problems that the States cannot resolve.

"California has provided for use of the Parent Locator Service for finding missing children. However, in most States use of this service is prohibited except for locating parents who are not making child support payments. Clearly, there is much work to be done before the States will be capable of even making a token attempt to locate victims of child-snatching.

"Our records also show that the majority of child-snatchings occur prior to custody being awarded — indeed, many occur prior to either parent's filing for custody. Thus, often there is no court order or even an active proceeding when the children are taken. This leaves the victim parent in an incredible situation. The fleeing parent cannot be charged with custodial interference or non-support, and there are no avenues available for assistance. But even for those parents who have court orders, assistance is meager and arbitrarily handled. In most States, custodial interference is a matter of being in contempt of court — it's usually difficult to get a bench warrant, and even that doesn't help if the parent has left the State. We have heard numerous Judges complain that their custody orders are unenforceable; they are quite concerned about the open door available to parents who have lost custody, fear losing custody, or simply don't want to be bothered with court appearances and legal fees.

"And yet, custody is not the issue here: childern are the issue. Regardless of whether a parent has custody or visitation rights — regardless of whether custody has been awarded — the question is really 'Does any person have the right to interfere with a child's right to know and love both parents? Does any person have the right to conceal a child and thereby violate the rights of the other members of the family unit to maintain contact with one another?' We feel that when one parent intentionally interrupts the love relationship between a child and the other parent, something needs to be done about it. Since 1934, this country has condoned the act of child-snatching by excluding parents under the Federal Kidnaping Statute. It is time to bring our laws up-to-date.

We truly feel that even if a State could pass a perfect law, it wouldn't help unless there were Federal legislation to back it up. As long as States can ignore one another's warrants and court orders, and as long as the cost of locating the abducting parent is the responsibility of the victim parent, there will be no end to child-snatching. Only with Federal legislation to allow locating and prosecution of these actions will we see even a hope for ending this irresponsible action.

"The matter of location is one which has bothered us from the very beginning. It is far too easy to get 'off the track' and discuss uniform custody, full faith and credit, and so on. These issues don't even come up for most of the parents in our files — they can't even find their ex-spouses, much less try to get them extradited or into a courtroom! It is not unusual for a parent to spend ten or twenty thousand dollars to find their children, over a course of several years. The idea of then spending thousands more to fight a custody battle in a foreign jurisdiction is overwhelming. And, of course, there is no guarantee that the parent will not abduct the children again, either before or after custody is awarded. No, custody is not the issue. Too many parents in our records have custody in two or three States, — but they don't have their children.

"And what of the children? What has happened to them during the intervening years? A dismally small number of the parents we know of have found their children. Almost without exception, the children are frightened, even terrified. Why? Because the abducting parent has told them that mommy or daddy will hurt them — kill them — take them far away. Some children have become hysterical at seeing what they thought was a ghost — they had been told the other parent was dead.

"[illegible] all of these children have required psychiatric or psychological counseling. [illegible] is not unusual for the entire family to participate. Adults we have talked with, who were abducted as children, feel quite confused about what happened to them. They were surprised to find that the parent left behind was looking for them all those years, worrying about them and wondering what had become of them. They usually feel that they were cheated out of a meaningful and important relationship — and they don't understand why.

"The fact that child-snatching goes unpunished, even when the parent can be found, only makes the action more tempting, and we feel quite strongly that Federal legislation which will provide not only for the location, but also the prosecution, of child-snatchers is the only solution. If, when a parent asks an attorney what the result would be if he or she simply took the child, the reply could be something other than 'probably nothing,' we feel that child-snatching would be reduced drastically."

Arnold I Miller
President

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## CUSTODY & CHILD-SNATCHING

The efforts of CRI and the American people are saying that we want the policies of government changed — CRI has no doubt they will be, but time is the most crucial factor. When a parent experiences the disappearance of his child, he soon realizes the child's plight in wanting to know and love both parents. Helplessness, panic, depression and similar feelings set in, because each day that goes by is another day the child is deprived of his parent's love. Add to this the financial drain on lawyers and private detectives, and you have a situation that SHOULD NOT HAVE TO HAPPEN!

The welfare of the child and his best interests should be foremost. It is time we accept greater responsibility for our children — our country's greatest resource, and the muscle fiber of our future.

Children don't know about and aren't interested in custody awards, visitation agreements, unfit parents, etc. A child's love is almost limitless, and invariably he will defend a parent in spite of "stories." Parents must become aware that they and they alone are responsible for making the court order work; they alone can make the child feel comfortable and secure in strange new schedules; and they alone can assure that the child won't have to make a choice between parents, by behaving like the kind of mature adults they want their children to become.

When two good, law-abiding parents walk into a courtroom in a custody dispute, the Judge is supposed to make his decision "in the best interests of the child." He sees before him two people who claim to love their child very much, yet he hears a verbal dispute which falls short of the child's best interests. A King Solomon decision is necessary in these cases. Many parents are aghast at the final decision a domestic judge makes, yet they must understand the judge's point of view: he is handing down a decision which is unenforceable. The strength of his decision does not rest with the court, but with the parents involved.

If the parents are sincere in wanting what is best for the child, they will work within the guidelines set by the court; if one parent is unwilling to accept those guidelines, problems such as withholding visitation and child-snatching occur -- AND THE VICTIMS OF THESE ACTIONS ARE THE CHILDREN!

It is "not illegal" for a parent to abduct a child and disappear across state lines. This is the essence of Congressman Charles Bennett's legislation, H.R.2965: that this type of abduction should be classified as a crime. One problem is that over 60% of these abductions take place prior to a custody award; in many instances, custody is obtained after an abduction without the other parent's knowledge. CRI feels that custody means nothing in child-snatching cases. A parent gets no "points" because he holds a piece of paper awarding him custody of children he can't find. Custody is custody, and child-snatching is child-snatching: the former a civil issue -- the latter a crime against children. Let's concentrate our efforts on this criminal act against our children.

ANY PERSON WHO ABDUCTS A CHILD, CROSSES STATE LINES AND CONCEALS HIM, REGARDLESS OF WHETHER HE IS A PARENT OF THE CHILD, SHOULD BE HELD ACCOUNTABLE FOR THIS ACT.

We need Federal assistance to locate the missing children and to penalize abducting parents. The states have demonstrated time and again that they are incapable of coping with this problem, and the incidence of child-snatching is growing. We need Federal assistance, and we need it now!

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It is very important, since there are no official records kept of child-stealing cases, that we get as much valid data as possible on as many cases as possible; for this reason, we have inserted a case sheet — if you know of other child-snatching victims who would like case sheets, just let us know. Also, all Chapter Coordinators and Lend-An-Ears will also have extra copies. We greatly appreciate your assistance in validating the figures we present in our arguments to Congress and the statistics we give the press. Many of our cases we simply have incomplete information on, such as knowing that there were two children taken , but not how old they were or when they were taken. We are also very interested in compiling data on whether children are taken before custody is granted, perhaps because the abducting parent fears losing custody. Also, we want to know whether children are taken under fairly "normal" circumstances, such as during visitation weekends, or whether they are abducted during the night from their usual home, etc.

It is also very important to know whether custody has been granted to victimized parents _after_ the child(ren) are taken, because we need to know how importantly to stress custody — ex parte custody decrees may not be considered valid in many jurisdictions, and many parents may have spent a great deal of money to obtain such custody only to find it useless.

We also need to know how many parents have been successful in obtaining custodial interference or other State warrants against the abducting parent, and whether having such warrants has been significant in locating or extradicting the abducting parent. Many of the cases we know of have had similar experiences to Mrs. Dunlap's, i.e., having the sheriff state that there is no money or manpower to effect extradition,even though the warrant has been obtained and the abducting parent found.

We have asked about using private detectives, because we get many letters from parents either asking us if we can recommend detectives (which we can't) or complaining that they feel they were "taken to the cleaners" by the ones they have hired. Occassionally we wonder just how many parents feel this way, so we thought this would be a good time to ask. After all, in almost every case in which the children have been found, they have been found by private investigators, not police.

We seem to get a lot of letters from parents who feel that their children have been taken to specific states or areas of the country. For this reason, we have asked whether you have any ideas as to the possible location of your child(ren). We may, at some future time, discover that certain States are "havens" for child-snatchers, and be able to get such States to cooperate in prosecuting child-snatchers found within their borders.

Mr. **Conyers**. Our next witnesses are a panel of Federal representatives from the Department of Justice, from the Federal Bureau of Investigation, and from the Department of Health and Human Services: Mr. Mark Richard, Mr. Francis Mullen—an old hand before this subcommittee—and Mr. Louis Hays.

All of you have prepared testimony which will be incorporated into the record at this time, and as soon as you are comfortably positioned and have determined who would like to lead off, you may commence your testimony.

[The complete statements of Mr. Richard and Mr. Mullen follow:]

## STATEMENT OF MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Dear Mr. Chairman: Thank you for the opportunity to present to this committee the views of the Department of Justice on H.R. 1290 relating to the problem of "child snatching." Before discussing the specifics of H.R. 1290, I would like to explain our current policy and involvement in this sensitive area.

As you know, the existing Federal kidnaping statute, 18 U.S.C. 1201, specifically excepts from its coverage the kidnaping of a minor child by his parent. It has long been the Department's position that Congress, by virtue of this exception, has manifested a clear intent that Federal law enforcement authorities not become involved in domestic relations disputes. Nevertheless, our assistance through the use of the Fugitive Felon Act (18 U.S.C. 1073) is often requested where the child snatching violates a state felony provision. The Fugitive Felon Act prohibits interstate flight to avoid prosecution and was enacted as a means of bringing Federal investigative resources to bear in the location of fugitives. In recognition of the intent implicit in the parental exception to the kidnaping statute, it is our policy to refrain from involvement in child snatching cases through use of the Fugitive Felon Act.

Occasionally, exceptions are made to this policy where there is clear and convincing evidence that the child is in serious danger of bodily harm as a result of the mental condition or acute behavioral patterns of the abducting parent. The United States Attorneys have been instructed to consult with the Criminal Division before issuing complaints in all child snatching cases. Requests for assistance that in the judgment of the United States Attorney arguably merit an exception to our general policy of non-intervention and include the necessary statutory elements of interstate flight and an underlying felony charge are reviewed by attorneys in the Criminal Division. If an exception is warranted, a complaint and warrant of arrest are authorized and an investigation is concluted by the FBI.

H.R. 1290 employs both civil and criminal approaches to the child snatching problem. The civil portions perceptively recognize that current law in many states encourages a parent who does not have custody to snatch the child from the parent who does and take the child to another state to relitigate the custody issue in a new forum. This kind of "forum-shopping" is possible because child custody orders are subject to modification to conform with changes in circumstances. Consequently, a court deciding a custody case is not, as a Federal constitutional requirement of the Full Faith and Credit Clause, bound by a decree by a court of another state even where the action involves the same parties. The second state will often award custody to the parent within its jurisdiction, thereby rewarding the *de facto* physical custodian notwithstanding the existence of an order or decree of a court in another state to the contrary.

One method to eliminate this incentive for child snatching is the Uniform Child Custody Jurisdiction Act (UCCJA). The Act, which must be enacted by each state, establishes standards for choosing the most appropriate forum to determine custody and requires that once the jurisdictional tests are met—usually by the "the "home state" of the child—other signatory states must defer to the appropriate forum and cooperate with its exercise of jurisdiction. The Act also provides that out-of-state custody decrees be recognized and enforced. To date some 39 states have adopted the UCCJA.

Section 3 of H.R. 1290 would add a new section, 1738A to Title 28 of the United States Code. In essence this provision would impose on states a Federal duty, under enumerated standards derived from the UCCJA, to give full faith and credit to the custody decrees of other states. Such legislation would, in effect, amount to Federal adoption of key provisions of the UCCJA for all states and would eliminate the incentive for one parent to remove a minor child to another jurisdiction. We believe that Congress' power under the Commerce Clause could sustain such legislation upon a properly substantiated record.

The heart of the plan is contained in proposed subsection 1738A(a) which provides that the authorities of every state *shall enforce, and shall not modify* any child custody determination made consistently with the provisions of the bill. For a custody determination to be consistent with the provision of the section, one of five factors, such as the state that entered the initial custody determination being the home state of the child, must occur.

So, once a parent gets a custody determination in his or her favor in the home state, other states shall enforce and shall not modify the decree. The only minor exception, where another state may modify the decree, is if the court of the state that entered the decree no longer has jurisdiction or has jurisdiction or has declined to exercise it to modify the decree.

Section 4 of the bill would amend Title 42 to expand the authorized uses of the Parent Locator Service (PLS) of the Department of Health and Human Services (HHS). The PLS has access to the records of other Federal agencies including the Social Security Administration and the Internal Revenue Service but under current law can only use these information resources to locate an absent parent for purposes of enforcing support obligations. Section 4 eliminates the requirement of a support obligation and allows the PLS to receive and transmit information concerning the whereabouts of any absent parent *or child* for purposes of enforcing a child custody determination or for enforcing the proposed parental kidnapping section. The list of persons who are authorized to obtain information from the Service on the location of missing parents or children is expanded to include state authorities having a duty to enforce child custody determinations, state courts having jurisdiction to make child custody determinations, any parent or legal guardian of an absent child who seeks the child to make or enforce a custody determination, and agents of the United States who have a duty to investigate a violation of the proposed new criminal statute.

I understand that HHS and the Administration are opposed to the expansion of the FPLS in the manner proposed in Section 4 of the bill. However, whether or not the Committee decides to broaden the mission of the FPLS for use in parental abduction cases, we urge that the Committee give the civil provisions of the bill an opportunity to prove their effectiveness as a deterrent before enacting criminal sanctions.

The Department of Justice fully supports all of the civil provisions of H.R. 1290. As I previously mentioned these provisions will reduce the incentive for child snatching by eliminating "forum-shopping" and will ensure that custody orders are consistent with the rights and interests of the child and each parent. Moreover, the approach taken by the bill will leave domestic relations litigation to the state courts, which, through years of experience, have developed the expertise and jurisprudence to handle it.

We have consistently and vigorously opposed the Federal criminalization of conduct involving the restraint of a minor child by his or her parent and we are opposed to the criminal provisions, Section 5, of H.R. 1290. The denomination of this conduct as criminal represents an entirely new, and in our view wholly inappropriate, involvement of the Federal criminal justice system in the area of domestic relations. We believe that the civil portions of the bill are a sound and constructive approach to the problem of child snatching. They should be given an opportunity to demonstrate their effectiveness before the conduct which they address is made a Federal crime.

The wording of Section 5 itself points up the difficulty of a "criminal" approach to this problem. While the language reflects changes suggested by the Department of Justice when considering similar bills in the past, and represents a commendable effort to minimise FBI involvement, I would like to point out some aspects of the bill that make it an investigative and prosecutorial nightmare.

First, the bill provides in proposed Section 1203(f) of Title 18 that it is an absolute defense to a prosecution if the abducting person returns the child unharmed not later than thirty days after the issuance of a warrant. (We assume this refers to the issuance of a Federal warrant.)

This provision requires agents to have the wisdom of Solomon. Suppose an agent, armed with a valid arrest warrant, locates the abducting parent under circumstances indicating the parent is returning the child, thereby establishing an absolute defense to prosecution. Should the agent arrest the parent thus bringing to bear the whole criminal process of fingerprinting, setting of bond and the like or should he simply hold the warrant and do nothing? What if the parent then changes his mind and flees again? By the same token, one can imagine how difficult it would be for a United States Attorney to prosecute successfully a parent who returns the child on the thirty-first day but be forced to decline to prosecute the parent who returns the child on the 29th day.

Second, proposed Section 1203(a) provides that it is an offense to conceal or restrain the child "without good cause." That requirement can be expected to present a very real dilemma for a United States Attorney's office and the FBI when faced with a request to begin an investigation. Suppose a parent reports that a child was snatched because of a disagreement between the two separated parents over proper medical treatment or education or religious upbringing of the child. Is the FBI supposed to become involved in weighing conflicting points of view or opinions in these areas? Also, as anyone familiar with the child snatching problem is aware, the abducting parent will likely claim that he snatched the child precisely because of the behavior patterns, life style, or living arrangements of the custodial parent which the abducting parent considered detrimental to the child. Thus the element of "without good cause" can be expected to be vigorously litigated in most prosecutions. One can imagine the unattractiveness of airing the "dirty linen" of a divorced couple's life in a criminal trial as the parent on trial tries to show that the custodial parent was such an evil person that the taking was for good cause.

Third, while proposed Section 1203(h) contains a definition of "restrain,' there is no definition of "conceal." The definition of restrain—to restrict the movement of the child without the consent of the custodial parent so as to interfere with the child's liberty by removing him from his home or school or confirming him or moving him about—is itself not very clear.

For example, the abducting parent may be expected to claim that the child's liberty was enhanced, not interfered with, by removing him from the home of the custodial parent or that the custodial parent consented to the removal of the child. The lack of a definition for "conceal" and the wording of the definition of "restrain" will likely cause problems for the FBI when asked to begin an investigation and of course the questions of whether the child was concealed or restrained in violation of the statute will be vigorously litigated at trial. For example, an abducting parent charged with "concealing" his child may try to prove that the child lived openly in the abducting parent's home and the victim parent just did not bother to come looking, which might be also offered as evidence of the victim parent's lack of concern for the child indicating that the taking was not without good cause.

Finally, as set forth in H.R. 1290, proposed new subsections 1203(a) and 1203(b) of Title 18 provide for a criminal penalty for restraint or concealing of a child that is in violation of a custody determination entitled to enforcement under the civil provisions of this act; or is in violation of "a valid written agreement between the child's parents, between the child's foster parents, between the child's guardians; or between agents of such persons;" or is in violation of a custody or visitation right arising from "a parental or guardian relationship to the child." As a minimum, the reference to a valid written custody agreement and the parent-child or guardian-child relationship should be eliminated and criminal sanctions should be based solely on a custody determination made by a state court.

To allow written custody agreements and the parent-child relationship to give rise to a criminal sanction for one who restrains a child in violation thereof would create a number of serious problems. It would require Federal authorities to determine rights of custody, and the validity of custody agreements without the benefit of prior civil court rulings in the cases. It would place Federal authorities, in some cases, in a crossfire between conflicting charges of Federal crime by both spouses and conflicting orders of two or more states. It would actually encourage parents to snatch their children before litigation, by offering parents who were successful in such a tactic the prospect that Federal criminal authorities would then enforce the new status quo. Consequently, it is recommended that if, contrary to our objections, the Committee is in favor of criminal provisions that proposed subsections 1203(a) (2), 1203(a) (3), 1203(b) (2), and 1203(b) (3) be deleted. Deletion of that language does not deny the aid of the Federal criminal authorities. It merely requires that a claimant establish his right in a civll court of the appropriate state before asking for help from the Federal criminal system.

Even leaving the criminal provisions as operative only when the potential defendant's actions in restraining or concealing the child violate a custody or visitation right arising from a custody determination entitled to enforcement under the civil provisions of section three of the bill can cause problems and serves to show the difficulty in any solution to the problem involving criminal sanctions.

Determining whether a custody right is entitled to enforcement under proposed section 1738A of Title 28 requires a preliminary investigation by the FBI into the facts and circumstances surrounding the issuance of the custody decree as well as a legal determination as to whether the custody right is entitled to enforcement before a full investigation is even begun. If the parent is found, the same factors have to be considered when deciding whether to prosecute. These legal issues may be exceedingly complex and, indeed, may be the subject of litigation in one or more state civil courts at the very times when the FBI is faced with a request to investigate and the United States Attorney is considering criminal prosecution.

In addition to these tremendous prosecutorial problems, prosecution for violations of the Act would ordinarily require the testimony of the victim child testifying against a parent and thereby exacerbating the emotional trauma for all parties in these cases.

Anyone who considers this sensitive problem has at the center of his thoughts the safety and welfare of the child who is often caught between the well-intentioned but competing claims of his parents. Sending the FBI to locate and arrest a parent may, in the case of an emotionally distraught parent, carry the potential for violence and, consequently, danger to the child.

Criminalization would place a severe strain on the resources of the FBI and the United States Attorney. Although the bill delays Federal investigative involvement for sixty days after both the filing of a report with local law enforcement authorities and a request for assistance of the state parent locator service. We would nevertheless anticipate being called upon to enter a significant number of cases.

Investigations and prosecutions would necessarily divert precious resources from other areas such as white collar crime, public corruption, and organized crime that have traditionally been and should remain the focus of Federal law enforcement efforts.

That concludes my formal statement and I would be pleased to answer any questions from the subcommittee.

## STATEMENT OF EXECUTIVE ASSISTANT DIRECTOR FRANCIS M. MULLEN, JR.

I appreciate this opportunity to set forth to the members of this Subcommittee, the FBI's views on the proposed Parental Kidnaping Prevention Act, and I am pleased to provide you with whatever assistance I can in developing an effective approach to what is a significant problem. Before addressing specific aspects of the legislative proposal I would like to outline briefly the Bureau's current involvement in parental kidnaping cases. Where state legislatures have enacted felony custody violation statutes and local authorities request our assistance, the Federal Unlawful Flight Act, Title 18, United States Code (USC), Section 1073, provides for FBI entry into interstate parental kidnaping cases. Reflecting the Congressional intent expressed by the parental exception in the Federal Kidnaping Act, Title 18, USC, Section 1201(a), the Bureau enters these cases only when the child is in physical danger and authorization has been obtained from the Department of Justice (DOJ).

These procedures, of course, limit our involvement to a small percentage of the many cases, and I share your concern over the current chaotic situation in which child custody can be repeatedly litigated, because of changed circumstances that affect the child's welfare. Often, parents with custody rights are left to their own devices in attempting to locate their absconding ex-spouses and their children.

In an attempt to address this problem, Section Three of the Bill requires states to give full faith and credit to custody decrees of other states, and can be expected to greatly improve the current situation of forum shopping and multiple litigation of child custody. The concern which I share with you over the current situation leads me to support Section Three of the Bill.

Section Four expends the authority of the Parent Locator Service (PLS) which has proven its ability to locate parents who are delinquent in their child support payments. The Bill would empower PLS to conduct extensive records searches for the parent who violates a custody decree, thus providing a most valuable service to the lawful custodial parent.

I urge, however, that you ascertain the effect that passage of Sections Three and Four, will have on the present problem before establishing Federal criminal sanctions in this field. This legislation would involve the Federal government's law enforcement apparatus in domestic relationships before it is determined the problem cannot be remedied by the civil measures proposed in this Bill, as well as, the criminal sanctions state legislatures may choose to establish. I believe possible alternatives should be explored thoroughly before resorting to Federal criminalization because of various reasons.

Criminalization will increase the potential for violent confrontation and emotional trauma, if not physical danger to the child. We know an arrest situation is more likely to produce violent and perhaps armed resistance than is a civil recovery proceeding. Although no resistance may occur, the sight of a parent being handcuffed, searched, and led away for incarceration by FBI Agents, could create severe and lasting emotional trauma to the child.

Another concern with regard to the criminalization portion of this legislation is the fact that it makes criminality depend upon issues which are the subject of civil litigation. In fact, Federal courts sitting in criminal cases would be forced to decide issues which may also be in litigatation before state courts.

Under this statute, a Federal court is required to decide in criminal proceedings, whether the custody order alleged to have been violated is entitled to enforcement under Section 1738A of Title 28, USC. Since the legislation requires deference by one state court to another state court only when the original determination of custody is made in a manner consistent with the provisions of 1738A, it can reasonably be expected that, in a number of cases, litigation raising that issue among others will be commenced in a second state. Civil proceedings provide a more appropriate forum for this determination than do criminal proceedings. Further, Federal criminal litigation of this issue represents an inefficient use of precious expertise which state courts have in family law. Finally, such procedures may result in precisely the multiple litigation of custody issues that this bill seeks to avoid; children would be subjected to the traumatic experience of testifying against their parents in both civil and criminal proceedings.

Of more direct concern to Federal law enforcement is that, in determining whether a predicate exists for a Federal investigation under the Bill as written, investigators and prosecutors may be called upon to determine such issues as whether jurisdictional requirements were met in the preceding civil actions; whether the child is "restrained" within the meaning of the statute; whether the custody order is entitled to enforcement under Section 1738A of Title 28, USC; whether the child is concealed or restrained without "good cause" within the meaning of the statute; whether "reasonable notice and opportunity to be heard" was given to the alleged violator of the original custody order; and whether because of "mistreatment" or "abuse" or threats of "mistreatment" or "abuse" an emergency existed which justified a court in taking jurisdiction. These are matters best determined by a court, in an adversary forum, preferably in civil proceedings, but certainly not by law enforcement officials.

Another criminalization issue that should be addressed is the cost of enforcement. An FBI Special Agent is an expensive resource. Should Congress make parental kidnaping and denial of visitation Federal crimes, and the FBI becomes the investigative agency, a substantial number of additional Agents will be needed to handle these misdemeanor violations. Given the disparate estimates of such occurrences, the precise number of additional Agent workyears is difficult to calculate, but if the American Bar Association estimate of 100,000 cases per annum is reasonably accurate, and assuming optimistically that 95% of the cases will be deterred or resolved by civil proceedings or by the Parent Locator Service, the FBI would be faced with 5,000 kidnaping cases each year. Presumably the easier cases will have been resolved, leaving the FBI with the 5,000 most difficult investigations.

Our experience in fugitive-type investigations leads us to expect that approximately 160 additional Agents would be needed, as well as, additional supervisory and support personnel to investigate 5,000 parental kidnaping matters. Operational expense would be greatly increased.

In discussing the issue of FBI resources, I should explain the FBI's quality case concept. Factors such as the increased capability of local and state law enforcement agencies have led to a decrease of FBI investigative activity in traditional areas such as bank robberies, property crimes, and fugitive investigations.

FBI efforts have been focused on cases requiring greater investigative sophistication and cases having a greater impact on the community at large, such as foreign counter-intelligence, organized crime, and financial crime. This policy has been encouraged by both Congress and the Department of Justice. We question whether it is perhaps anomalous for the FBI to reduce our investigative effort in bank robberies and at the same time assume responsibility for a misdemeanor involving essentially a domestic problem.

In conclusion, we recognize the existence of a serious problem which we expect will be substantially alleviated by the full faith and credit portion of this legislation and we will continue to provide whatever assistance we can in these matters. The services of the FBI will remain available to local authorities through utilization of the unlawful Flight Statute in appropriate cases; through the services of the FBI Laboratory, the Identification Division, and National Crime Information Center computer network; and through training afforded to local law enforcement officers in the field and at the FBI Academy.

We will enforce to the best of our ability (consistent with other investigative demands and available resources), whatever laws are enacted. In consideration of the problems of criminalization, we encourage you to give the civil portion of the Bill an opportunity to impact upon the parental kidnaping problem, and we encourage you to explore the feasibility of other civil measures before interjecting the Federal criminal law enforcement apparatus into these situations. Thank you again for this opportunity, and I will be glad to respond to questons.

## TESTIMONY OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY: LARRY LIPPE, CHIEF, GENERAL LITIGATION AND LEGAL ADVICE SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE; FRANCIS MULLEN, JR., EXECUTIVE ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE; AND LOUIS B. HAYS, DEPUTY DIRECTOR, OFFICE OF CHILD SUPPORT ENFORCEMENT, DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Mr. CONYERS. Would you identified, yourself sir?

Mr. LIPPE. Yes. My name is Larry Lippe. I am Chief of the General Litigation and Legal Advice Section of the Justice Department's Criminal Division.

Mr. CONYERS. Welcome before the subcommittee.

Mr. LIPPE. Thank you, Mr. Chairman.

Mr. RICHARD. Mr. Chairman, thank you for the opportunity to present to this committee the views of the Department of Justice on H.R. 1290 relating to child snatching.

My name is Mark Richard. I am Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. On my immediate left is Mr. Francis Mullen, Jr., Executive Assistant Director of the FBI. Mr. Mullen's responsibilities include the Criminal Investigative Division, which is that part of the FBI that would be affected by the bill before the committee.

On my far left is Mr. Hays, Deputy Director, Office of Support Enforcement of HHS, who will be able to discuss the Federal Parent Locator Service.

Rather than read the entire prepared statement, Mr. Chairman, and in the interest of brevity, if it is agreeable, I would like to briefly summarize my written testimony.

My. CONYERS. By all means.

Mr. RICHARD. Let me begin by stating that the Department of Justice shares the committee's concerns about the problem of child snatching. The issue, as we see it, is to define the proper role of the Federal Government in addressing this serious problem and augmenting the efforts of the States.

Under existing law, the involvement of the Department of Justice in responding to child-snatching cases is limited to the occasional use of the Fugitive Felon Act. In recognition of the congressional intent implicit in the parental exception of the kidnapping statute that Federal law-enforcement authorities not become involved in domestic relation disputes, it is our policy to use the Fugitive Felon Act only where there is clear evidence that the child is in serious danger of bodily harm as a result of the mental condition or acute behavioral patterns of the abducting parent.

H.R. 1290 employs both civil and criminal approaches to the child-snatching problem. The bill will impose on the States a Federal duty, under enumerated standards derived from the Uniform Child Custody Jurisdiction Act, to give full faith and credit to the custody decrees of other States.

This would in effect amount to Federal adoption of key provisions of the USSJA for all States for purposes of interstate custody cases, thereby eliminating the incentive for a parent to remove a minor child to another jurisdiction shopping for a sympathetic forum and reducing the existence of conflicting custody determinations in different States.

We believe that Congress power to legislate under the commerce clause could sustain this legislation. The bill also expands the authorized uses of the Parent Locator Service to permit its information resources to be utilized in the enforcement of child custody determinations and for enforcing the proposed parental kidnaping section.

In our view, Mr. Chairman, criminalization of this conduct is an inappropriate and unwarranted extension of the Federal criminal justice system into the sensitive area of domestic relations, an area which has traditionally been within the exclusive province of the States.

On the other hand, the civil provisions of this bill are a sound and constructive approach to the serious problem of child snatching and should be given an opportunity to demonstrate their effectiveness before the conduct they address is also made a Federal crime.

Let me summarize our objections to the criminal portions of the bill. First, the bill would criminalize the conduct of a parent who has restrained or concealed his child in violation of the civil provisions of the bill, or in violation of a valid written custody agreement, or in violation of a parent-child relationship. At a minimum, the reference to a custody agreement and the parent-child relationship should be deleted.

Allowing custody agreements and the parent-child relationship by itself to give rise to a criminal sanction would require the Federal authorities to determine the validity of custody agreements without benefit of court rulings, and may actually encourage child snatching, because a parent who is successful in such an effort would have custody by reason of the parent-child relationship, and the other parent would be faced with the prospect that Federal criminal authorities would then enforce the new custody arrangement.

Consequently, it is recommended that if, contrary to our suggestions, the committee is in favor of criminal provisions, that proposed subsections 1203(a)(2), (b)(2), (b)(3) be deleted.

Second, proposed sections 1203 (a) and (b) provide that it is an offense to conceal or restrain the child without good cause. That requirement can be expected to present a very real dilemma for the U.S. Attorneys Office and the FBI when faced with the request to begin an investigation.

On many occasions, a parent reports that a child is snatched because of a disagreement between the two separated parents over the proper medical treatment, education, or religious upbringing of the child. The FBI may be asked to weigh conflicting points of view or opinions in these areas.

Also, the abducting parent will likely claim that he snatched the child precisely because of the behavioral patterns, lifestyles, or living arrangements of the custodial parent which the abducting parent considered detrimental to the child.

Thus, the element of "without good cause" can be expected to be vigorously litigated in most prosecutions.

Third, while proposed section 1203(h) contains a definition of "restrain," there is no definition of the term "conceal." The definition of "restrain," "to restrict the movement of the child without the consent of the custodial parent so as to interfere with the child's liberty by removing him or her from the home, or school, or confining the child or moving about with the child," is itself not very clear.

For example, the abducting parent may be expected to claim that the child's liberty was in fact enhanced, not interfered with, by removing him or her from the home of the custodial parent; or that the custodial parent consented to the removal of the child.

The lack of a definition for "conceal," and the wording of the definition of "restrain," will likely cause problems for the FBI when asked to begin an investigation, and of course the questions of whether the child was concealed or restrained in violation of the statute will be vigorously litigated at trial.

For example, an abducting parent charged with concealing his or her child may try to prove that the child lived openly in the abducting parent's home, and that the victim-parent just did not bother to come looking—which might be also offered as evidence of the victim-parent's lack of concern for the child, indicating that the taking was not without good cause.

Fourth, in a commendable effort to minimize FBI involvement, the proposed section 1203(f) of the bill provides that it is an absolute defense to a prosecution if the abducting person returns the child unharmed not later than 30 days after the issuance of the warrant.

We assume, incidentally, that this refers to the issuance of a Federal warrant. This allows an after-the-fact action by the defendant to in effect fully excuse an act otherwise made criminal. This provision also requires agents to have the wisdom of Solomon.

As you previously pointed out, Mr. Chairman, suppose an agent, armed with a valid arrest warrant, locates the abducting parent under circumstances indicating that the parent is returning the child, thereby establishing an absolute defense to the prosecution. The agent must immediately decide whether to arrest, thus bringing to bear the whole criminal process, or to hold the warrant, or to do nothing.

Taking the latter course of action may of course result in further flight of the abducting parent, if there is a change of heart about returning the child.

By the same token, one can imagine how difficult it would be for a U.S. attorney to prosecute successfully a parent who returns the child on the 31st day, but be forced to decline to prosecute the parent who returns the child on the 29th day.

Finally, criminalization would in fact place a severe strain on the resources of the FBI and the U.S. attorneys. Investigation and prosecution would divert scarce resources from areas like white collar crime, public corruption, and organized crime that have been and should remain the focus of Federal law enforcement efforts.

We would submit, Mr. Chairman, that in view of the limited data available concerning the full dimensions of the problem, that the appropriate course of action would be to implement the civil aspects and give them an opportunity to impact on the problem before we embark on Federal criminalization.

That concludes my summary, Mr. Chairman. I believe Mr. Hays also has a prepared statement which you may wish to hear before posing questions.

Thank you.

Mr. CONYERS. Did the FBI wish to make any comment?

Mr. MULLEN. Mr. Chairman, I did have a statement prepared, but it parallels Mr. Richard's and I would like to enter it into the record, if I may. But again, it would be repetitious, so we should go on to Mr. Hays.

Mr. CONYERS. Without objection, so ordered.

Mr. Hays?

Mr. HAYS. Thank you, Mr. Chairman.

Mr. Chairman, members of the Subcommittee on Crime, I am Louis B. Hays, Deputy Director of the Office of Child Support Enforcement. I appreciate the opportunity to be here today to provide the administration's views on H.R. 1290's impact on the Department of Health and Human Services.

The administration is supportive of measures to deter parental kidnaping and to locate children already kidnaped by a parent which would help to prevent psychological and physical harm to both the children and the aggrieved parent.

However, we do object to making the Federal Parent Location Service available to locate the children who have been taken in violation of the custody decree. The Federal Parent Locator Service's records are obtained—as described later in my testimony, from tax filings and social security records. To extend the use of tax record information where no substantial Federal interest has yet been demonstrated would be inconsistent with congressional and administration policies to protect most strictly the privacy of taxpayers and information supplied in their returns.

We are also concerned by the bill's potential for diffusing the mission of the child support agencies. To adequately describe these misgivings, I would like to take a moment to discuss the child support program and the principles upon which it is based.

The program is a Federal-State effort to locate absent parents, to establish paternity of the children, and to insure that absent parents provide support payments for their children. This effort is essentially focused on collecting child support to reimburse welfare expenditures, reducing the welfare caseload and keeping marginally indigent families off the welfare rolls. The program is succeeding. One of the major reasons for its success is the single goal—enforcement of support—apparent to all those participating in its administration.

We believe that requiring child support agencies, many of whom are already insufficiently staffed for optimum productivity, to assume additional responsibilities and caseload would disrupt the administration of the child support program and prevent it from reaching its full potential.

If the subcommittee should pursue the use of the Federal Parent Locator Service, we would make the following recommendations:

Assistance from the State child support agencies should be confined to using the State Parent Locator Service for referral of requests for address information to the Federal PLS in the same manner that they currently submit requests in child support cases.

The use of the State Parent Locator Service should be limited solely to local law enforcement officials. Under such a provision, local law enforcement officials, after having received a report of parental kidnaping, would be the coordinators of the search effort and would use all resources available to them, including a request to the State PLS.

This approach would allow the officials who are attempting to deal with violations of State custody laws to access the SPLS, instead of putting the burden on the parent.

We would also point out that the bill does not create a duty on the part of the State agencies operating the State PLS to accept location requests in parental kidnaping cases. Neither does it authorize States to charge fees for costs incurred in accepting and processing these requests, or in searching records for a child or the individual who took the child in violation of the custody order.

Further, consideration should be given to financing the costs that would be incurred if the Federal PLS is made available. The main sources of addresses available to the Federal Parent Locator Service are the records of the Social Security Administration and the Internal Revenue Service. Both these agencies now have annual reporting requirements.

The Social Security Administration hopes to complete recording changes of address contained in the employer's wage report covering 1978 in July 1980, and for 1979 by January 1981. The IRS records are updated by the September following the April personal income tax filing deadline of every year. An immediate request to the Federal Parent Locator Service for location of a recently kidnaped child might therefore prove unfruitful.

The foregoing comments are technical in nature and should not be construed as detracting from our opposition to the proposed expansion of the functions of the Federal Parent Locator Service.

Thank you.

Mr. CONYERS. Thank you, gentlemen.

Mr. Hays, let us try to understand the Parent Locator Service. My sensitive antennae suggest that if you could recover the cost and be careful of privacy invasions, that the Department might go along with it.

Mr. HAYS. We are concerned, foremost, about the privacy implications of extending the use of Federal income tax returns which are, I might add, the foundation of the Federal Parent Locator Service, our most valuable source of information.

We are concerned about costs, but I think as much or more than costs, we are concerned about the impact that would have on the child support program because of the resources that that could drain away from the larger program.

Mr. CONYERS. That brings into direct discussion the arguments that have been presented in front of you. Is it more important to collect bread from absconding fathers, or to track down kidnaped children?

I mean, that is a basic policy question. It seems to me rather unsettling to have it answered that we would prefer to collect money than prevent the kidnaping.

Mr. HAYS. Mr. Chairman, if I might suggest, as well, there is a further consideration that has not really been discussed here today. That is, the adequacy, as opposed to the propriety of using the Federal Parent Locator Service, or the State Parent Locator Service. These systems work admirably for locating absent parents who have a child support obligation. They are heavily reliant upon automated computer searches, either of Federal records or State records. At the local level, they are highly dependent upon telephone investigation procedures. There is a minimum of traditional field investigation work done at any level of the child support program. What I am suggesting is two things:

First, while this system may be good for locating child support obligors, who typically do not attempt to conceal themselves, it may not be particularly successful in locating people who are attempting to conceal themselves. Somebody who is attempting to conceal himself may not be found in a computer check of records.

Similarly, in addition, the other problem is one of timeliness. If a child is kidnaped today, going to the Federal Parent Locator Service tomorrow, will be of no use because of the way in which Federal records are updated and maintained. So I think those questions go perhaps beyond the propriety and question the basic adequacy of trying to use one system for another purpose.

Mr. CONYERS. Let me ask this of our Justice Department witness: In my mind, I have divided this problem into that of searching for parents and abducted children before there has been court proceedings as one major area. It seems to me that we are trying to find a set of remedies to make that search more effective.

Then I see another problem having developed about how, where there is a court procedure, we can, through the existing Uniform Child Custody and Jurisdiction Act, persuade courts not to allow forum shopping. It seems to me that a court that would allow a parent who has abducted a child to come in to contest another court's proceeding is clearly encouraging that process to go on in all the several States.

It seems to me that if we could move to eliminate that—and I think I see a remedy there—and then on the other hand move to reduce the number of absconding cases that occur before proceedings, we have two really quite entirely different problems that could, if solutions were reached for both of them, address this whole area without rushing to the criminalizing processes and perhaps to a locator system that while it seems like a good idea might break down and be quite unproductive in the process. I would like to elicit your reaction.

Mr. **Richard**. I agree with your analysis, Mr. Chairman. I would point out that, without being a domestic relations expert myself, I gather that these suits filed in the second jurisdiction are predicated on alleged changes in circumstances, all of those situations that the petitioner will characterize as "for good cause," and on that basis seek to invoke the jurisdiction of the second State.

That is part of the dilemma which we are faced with when we permit such phrases as "with good cause," "without good cause," as being the triggering events for any criminalization approach.

Mr. Lippe?

Mr. **Lippe**. I have nothing to add to that.

Mr. **Conyers**. Mr. Hyde?

Mr. **Hyde**. Mr. Richard, let us assume in a divorce case that the wife is awarded the car, and the husband steals the car and takes it to another State. The FBI would have no problem getting into that case, would they?

Mr. **Mullen**. Under our- —

Mr. **Hyde**. I asked Mr. Richard, but the FBI raised its hand. [Laughter.]

Mr. **Mullen**. Yes, we would.

Mr. **Hyde**. You would have a problem?

Mr. **Mullen**. Yes; we no longer investigate single car theft cases, one suspect/one car, due to the lack of resources, Congressman. We just——

Mr. **Hyde**. How many cars would have to be taken before your interest would be peaked?

Mr. **Mullen**. The type of case we get interested in would be what we call a ring case. We would have at least, say, five cars, perhaps up to hundreds and even thousands of cars, an organized criminal effort involved, interstate transportation, resale, or whatever, of cars.

Mr. **Hyde**. Now, you heard the testimony of these two ladies about how they spent $28,000 to $30,000 staking out places and that sort of thing. If a child were snatched by an ex-husband, it seems it would certainly be useful if you could use a mail cover, because chances are that members of the family would be contacted somewhere along the line. Under existing law, you could not do that, could you?

Mr. **Mullen**. We could not, and even under existing law in most criminal cases where we can, we do not. We use the mail cover as a very last resort, and normally only in national security type cases. The same can be said of a wiretap. That would be a last resort when all other investigation has failed.

Mr. **Hyde**. Even where the child is with an ex-spouse who is a drug addict or an alcoholic, and is a psychologically disturbed person, God forbid you should bug anybody's phones? Is that it?

Mr. **MULLEN**. That is basically correct. We just do not use the technique.

Mr. **HYDE**. And you do not watch the mail, because the spouse might write his parents, and her parents, and let them know where he is? You do not do that, either?

Mr. **MULLEN**. There are other considerations, Mr. Congressman.

Mr. **HYDE**. What other considerations?

Mr. **MULLEN**. An intrusive investigative technique and we can normally, in this type of a case, if the FBI were involved it would not take a mail cover or a telephone tap to locate the individual. I think it would be much easier than that.

Mr. **HYDE**. Well, then, let us get the FBI involved in these things. If you have the manpower——

Mr. **MULLEN**. We do not have the manpower. That is the problem.

Mr. **HYDE**. If you had the manpower, authorized by the Congress.

Mr. **MULLEN**. For each 5,000 cases, we estimate it would take between 160 and 205 agents at a cost of $5.5 to $7.5 million. The FBI is in a mode at this time where we are getting out of cases of lesser priority such as escaped Federal prisoners where we have turned over the investigations to the U.S. marshals in order to concentrate on organized crime.

Mr. **HYDE**. Abscam, and things like that, are much more interesting, I am sure. [Laughter.]

Mr. **MULLEN**. I am prohibited from discussing that case, Mr. Congressman. I will have to stay off of that. [Laughter.]

In the unlawful flight program, for instance, we currently have over 4,000 unlawful flight investigations underway. Most of these involve murderers, rapists, robbers, and so forth. We think that is where we should concentrate on the individuals who are of the most danger to the community as a whole.

Mr. **HYDE**. How about kidnapers? Do you have any active kidnaping cases?

Mr. **MULLEN**. We have had approximately 2,800 total investigative matters concerning kidnaping during fiscal year 1979.

Mr. **HYDE**. And you view "kidnaping" as a serious offense, I take it?

Mr. **MULLEN**. That is correct; we do.

Mr. **HYDE**. But if the abducted person is taken by an emotionally disturbed parent, somehow that is of lesser significance than if it is done for money?

Mr. **MULLEN**. If it is a parental kidnaping and there is an emotionally disturbed parent, we have entered into some of those investigations. We are not unmindful of the problem, and we would like to help. But we can only do so where there is this serious concern about the well-being of the child.

Mr. **HYDE**. Let me ask you this: What would you think of amending this bill to trigger FBI involvement if probable cause could be shown that danger would or does exist for the child?

In other words, perhaps not every domestic controversy would involve the FBI, but if the kidnaper were a dangerous person or could be dangerous to the child——

Mr. **MULLEN**. I see a danger here of every parent coming to the FBI indicating that there is a danger.

Mr. HYDE. What if the complainant had to prove probable cause before a magistrate, for instance, that the spouse had a violent and ungovernable temper, smashed up the house—that sort of thing.

Mr. MULLEN. That is something that can be considered; yes.

Mr. HYDE. It would narrow it down.

Mr. MULLEN. You would need a threshold level to really indicate there is a danger to the child.

Mr. HYDE. Right. However, you did get into the one case we heard testimony on this afternoon, where that was shown.

Mr. MULLEN. That is correct. We have only 16 of these types of cases at present under the unlawful flight statute.

Mr. HYDE. That is a policy decision you make; is it not?

Mr. MULLEN. A policy decision of the FBI and the Department of Justice; yes, sir.

Mr. HYDE. I know OMB has a lot to say about how effective our law enforcement is in terms of personnel and resources available, but that is not your problem.

Mr. MULLEN. But I can see the current structure of this particular bill, the criminal aspect, the criminalization, would be a very, very difficult thing to enforce.

Mr. HYDE. I agree with you, to some extent.

Mr. MULLEN. As I see it, it is more like using the FBI as a club. If you don't bring them back, we will——

Mr. HYDE. I agree with you. As much as I want to support the bill as it is drafted—and I am a cosponsor—it might present significant problems in terms of resources. But, if we narrowed it down to those cases where probable cause of danger to the child was found by a magistrate, could you accept that?

Mr. MULLEN. It would depend upon the threshold level as to what would constitute "danger." Because you would have every parent coming in and saying——

Mr. HYDE. Well, we would need your help, then, in drawing that language so it covers only the serious cases. Maybe we can draft such an amendment.

Mr. MULLEN. That is something we should think about and consider. I would be happy to work with the staff on something like that.

Mr. HYDE. Thank you.

Mr. RICHARD. Congressman, may I just add that that is a much harder standard, the one you are suggesting, than the one currently employed by the Department of Justice in deciding which cases to get the FBI involved in.

Mr. HYDE. Which standard do you use now?

Mr. RICHARD. I would say more in terms of "clear and convincing evidence," which in our judgment suggests an immediate risk of danger to the child.

Mr. HYDE. Rather than "probable cause?"

Mr. RICHARD. I do not think we demand a probable cause showing in the information we are seeking in order to make our decision.

Mr. HYDE. I would be very happy to accept "clear and convincing evidence of danger." You say that is a lesser standard than "probable cause?"

Mr. RICHARD. Well, I mean, you are suggesting a very formalistic approach for going before a judicial officer to make this determination.

I would imagine that that alone would require some investigation in order to determine precisely the nature of the evidence to support the contention or the petition. Moreover, involvement of the judiciary in an essentially prosecutive determination would raise all sorts of problems.

We now operate at a much less formal system.

Mr. HYDE. But, under that system, you are limited to about 15 or 16 cases each year, and God help those who are not within that group. I would like us to consider a remedy where a parent could go to a magistrate and say, "My spouse has this record; or the child has this condition, and we need the Federal Government to help us."

The magistrate could look at that evidence, could ask for more and have the Justice Department come in to make a presentation, before he made a final judgment.

Mr. CONYERS. Would the gentleman yield?

Mr. HYDE. Yes.

Mr. CONYERS. Why could they not do that in the State court where these matters are much more familiar, and have the Uniform Child Custody Act operative so that it could be enforced by the States?

Mr. HYDE. Well, if the Uniform Act is indeed in effect in that State, that would be fine and I would welcome that solution. I am assuming however, that there is no such help to be had and that the parent has gone from the sheriff's department, to the city police, and elsewhere, with no results, as is often the case. Private eyes promise magic for $100,000, and she does not know where to go.

Mr. CONYERS. Well, these terms might be more precisely incorporated into the Uniform Child Custody Act——

Mr. HYDE. Perhaps.

Mr. CONYERS [continuing]. So that we could avoid another legal procedure. That was my thought in trying to suggest that to the gentleman.

Mr. HYDE. I think there is work to be done on the bill, and I think we can improve it. I certainly hope we can. I do not want to abandon a promising solution to a very serious problem.

Mr. CONYERS I thank you, gentlemen.

Mr. Gudger?

Mr. GUDGER. Just two or three very brief questions, Mr. Chairman.

Mr. Mullen, as I understand it, I believe you testified that you had a specific number on average cases that you have had under unlawful flight to avoid prosecution. What was that number? I do not recall it.

Mr. MULLEN. UFAP, we have approximately 4,000 unlawful flight cases pending at this time.

Mr. GUDGER. And you also testified that those generally dealt with major felony offenses?

Mr. MULLEN. That is correct.

Mr. GUDGER. And in most instances, those were State law violations where you are securing a defendant?

Mr. MULLEN. In all cases.

Mr. GUDGER. They are all State flight cases. They may be flight imprisonment, or they might be flights to avoid prosecution.

Mr. MULLEN. Unlawful flight to avoid confinement is yet another section of the statute.

Mr. GUDGER. How many of those do you have?

Mr. Mullen. I do not have that figure with me.

Mr. Gudger. Well, all right, sir. Let's get with the unlawful flight to avoid prosecution situation. Now when you find the man who has fled say from North Carolina and you find him in Oregon, do you then return him under your warrant? Or does he stand extradition proceedings there?

Mr. Mullen. Extradition proceedings. To obtain an unlawful flight warrant, a crime committed must be a felony under the laws of the State. The State must agree to extradite wherever the individual is located. Third, you must have the positive evidence of interstate flight.

Now the unlawful flight statute is only used to locate. Although there are criminal provisions, I know of no case where there has ever been prosecution. The Federal warrant is always dismissed.

Mr. Gudger. That was the next question I was going to ask. You are really lending the power and authority of the FBI and the Federal system to locate someone who has fled from the State after committing a felony within that State——

Mr. Mullen. That is correct.

Mr. Gudger [continuing]. To avoid prosecution by that State. And when you have located and incarcerated that individual in his State of asylum, you then notify the State from which he absconded and they will proceed with the extradition. You are through with the matter, and you do not prosecute the unlawful flight to avoid prosecution.

Mr. Mullen. That is correct. The U.S. attorney will normally go before the magistrate and ask that the warrant be dismissed.

Mr. Gudger. All right. Now, then, you say that quite a number of these cases are cases involving robbery, for instance? Armed robbery?

Mr. Mullen. These would be armed robbery, that is correct.

Mr. Gudger. All right. Let us say that we have arms used in the kidnaping of a child in violation of the State law, after custody has been awarded, and in violation of State statute. Under the State statute this is made, say, a 20-year felony. Would you act in that situation?

Mr. Mullen. We would. We would consult with the U.S. attorney, but to me that would constitute danger to the child, and perhaps we would be able to obtain a warrant—again with the agreement of the U.S. attorney, after which he would consult with the Department of Justice—if firearms are used in the abduction of the child?

Mr. Gudger. Yes. That is what I am asking.

Mr. Mullen. To me, that would appear to be endangering the child, and we could possibly act in those cases.

Mr. Gudger. All right. Let us say that instead of a firearm, we had some other weapon, a knife or a bayonet or something of this nature——

Mr. Mullen. Sure. That indicates the——

Mr. Gudger [continuing]. Which indicated a mentally unbalanced person.

Mr. Mullen. Or a propensity for violence; certainly, yes. That would be a consideration in obtaining unlawful flight process.

Mr. **Gudger.** So there, too, would be a situation where there was danger to the child and you are moving to arrest that danger, or to supress that danger.

Mr. **Mullen.** That is correct.

Mr. **Gudger.** So you can see, I take it then, that there is a justification for your using this process where there is manifestion that there is some danger to the child's either physical or emotional well-being?

Mr. **Mullen.** Not the "emotional" as well as the physical well-being of the child. It would be hard to determine what would constitute the "emotional."

Mr. **Gudger.** Well, let us say where there is an emotional parent who has seized the child and seized the child under violent circumstances.

Mr. **Mullen.** This would be a consideration if the parent abducting the child had a background of mental problems, that would be a consideration as to whether an unlawful flight processing would be authorized.

Mr. **Gudger.** So you are inclined to think that there could be an appropriate, or there is an appropriate exercise for your jurisdiction under unlawful flight now; and that if we could define it more specifically and perhaps extend it a little further to where we were being a little more protective than perhaps your policy decisions now, we would not be acting in contradiction to the present?

Mr. **Mullen.** To more carefully define what would constitute "danger" to the child? Is that what you are saying?

Mr. **Gudger.** Yes.

Mr. **Mullen.** That might be more helpful, along the lines of what Congressman Hyde——

Mr. **Conyers.** May I ask my colleague: Are you suggesting that perhaps by changing the "flight to avoid prosecution," we might be able to get at the problem of the dangerous child snatcher? Or are you suggesting that maybe under the existing law, without change, policy interpretation could affect that?

Assuming that your thought is valid?

Mr. **Gudger.** I am suggesting both, Mr. Chairman. Really, I think I have expressed it in both forms to Mr. Mullen. I think he has commented on both contexts.

Mr. **Conyers.** What is the reaction of the Department on that?

Mr. **Mullen.** What we would be doing, Mr. Chairman, is formalizing what constitutes "danger" to the child. I would not see any problem with that. It would require some staff work and discussion to see where we stood.

Mr. **Conyers.** I am bending Mr. Hyde's proposal a little out of shape. Suppose, as a policy decision, they met and said, after reading the testimony here today, that we do worry about this problem and we have intervened in certain cases; let us raise it to a policy level and save 535 men and women, innumerable staff, printings of hearings, and witnesses, to accomplish this same thing. Let's just say, "We'll do it." Is that beyond the realm of possibility in the bureaucracy? [Laughter.]

Assuming that your thought is valid?

Mr. **Mullen.** Nothing is beyond the realm of possibility, Mr. Chairman. [Laughter.]

Mr. **Conyers**. Almost everything seems to be.

Mr. **Mullen**. We are doing it. But if the committee and the staff workers have some suggestions as to how we can further expand this, we would be more than pleased to talk with them.

Mr. **Richard**. Mr. Chairman, let me add, though, that there is a danger, by trying to articulate the specific factors which would constitute "danger," that you inevitably end up excluding some that you may want to ultimately consider, given unusual circumstances, so that you would want to retain a certain amount of flexibility and not get boxed in by your own standards.

Mr. **Conyers**. I am emphasizing flexibility, so I would not want a list of 12 and then leave out 27 others. As long as it was clear that there was a policy in which danger would be an element in triggering the operation of the FBI, it seems to me that really, along with the other possibilities that have been suggested in the course of these hearings, we might be moving forward in a very important way.

Mr. **Richard**. That policy is already articulated in the U.S. Attorney's Manual as being a policy of the Department of Justice.

Mr. **Gudger**. Mr. Chairman, might I ask one more question?

Mr. **Conyers**. Certainly.

Mr. **Gudger**. I would like to ask the members of this panel collectively: You heard me question certain lay witnesses earlier today as to whether or not they saw means whereby Parent Locator Services might be enhanced—whether in the range of trying to locate parents for support purposes or for prosecution purposes—along the lines here intimated.

Do you see any way in which locator services in the situation in which the FBI is not involved, and yet in which the parent who has custody is trying to locate the other spouse and child, where anything could be done to beef up this type of service to get methods of locating a parent which are not now available to the Parent Locator Service and not now available to interstate processes?

Mr. **Mullen**. I cannot think of any particular "super locator service." We do have the National Crime Information Center, and if a State has a fugitive felony warrant the identity of that individual can be entered into NCIC so if he or she are ever stopped or investigated there would be a computerized record that would be relayed back to the originating department giving the location of the individual. But I cannot think of anything beyond that. We would access certain records on the computer system. I know the identity of no particular system in addition to that maintained by HHS.

Mark?

Mr. **Richard**. Mr. Gudger, no easy solution comes to mind to the problem. I do not know the technical problems why there should be such a lag time with the Parent Locator Service in getting information more current. I am not familiar with the technical aspect of it, and no easy solution comes to mind for improving our capacity to identify and locate individuals around the country. We do not, nor in my judgment should we, have national identity cards, or similar devices which facilitate locating people. I mean, the social tradeoffs are enormous in this area.

Mr. **Conyers**. Well, I thank you for the exchange, and we appreciate the Government's position here. I hope you will follow along with us as we work toward remedies.

I thank all of you for appearing before us.

Mr. RICHARD. Thank you.

Mr. MULLEN. Thank you.

Mr. CONYERS. We have one final witness from the American Bar Association whom we want to give a full hearing: Dr. Doris Jonas Freed, chairperson of the family law section and a member of numerous organizations that have been working on domestic relations and matrimonial matters. We will incorporate your carefully prepared statement and we invite you to make any concluding observations about any of the testimony that you have heard in the course of the day.

[The complete statement of Ms. Freed follows:]

### STATEMENT OF DORIS JONAS FREED, CHAIRPERSON, COMMITTEE ON CUSTODY, AND COUNCIL MEMBER, SECTION OF FAMILY LAW, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee: I am Doris Jonas Freed, a practicing attorney from New York City where 95 percent of my practice is devoted to family law. I am a member of the Council of the Family Law Section of the American Bar Association. I am also Chairperson of the Section's Custody Committee and Chairperson of its Committee on Research and Statistics. I appear before you today at the request of the ABA's President, Leonard Janofsky, to inform you of the Association's views on legislation to reduce the number of episodes of parental kidnapping.

Over the past number of years, the Association and the members of the Family Law Section have been vitally concerned with the ever growing problem of child snatching and its harmful effect on the snatched child.

On August 10, 1977, the Association's House of Delegates adopted a resolution approving in principle the proposition that interstate child stealing by one parent from the custodial parent is a serious problem for which improved federal law enforcement is needed and requesting the ABA's Section of Family Law to study methods of improved enforcement and to report its findings to the House of Delegates.

In August, 1978, the House of Delegates adopted five resolutions aimed at reducing the number of episodes of child snatching. These five resolutions are attached as "Appendix A."

The five resolutions adopted by the House of Delegates were part of a package of six recommendations that were submitted to the ABA House by the Family Law Section to remedy the problem of child snatching.

By a standing vote of 79 to 89 the House declined to approve a sixth recommendation of the Section. This recommendation was to support enactment of federal criminal legislation making the wrongful removal of a child from a parent entitled to custody to another state or country a misdemeanor.

The Family Law Section had, over a period of several months, studied all aspects of the problem of child snatching and the legal ramifications thereof prior to making its recommendations to the ABA House.

The five resolutions adopted by the ABA recognize the need for a comprehensive approach to the problem of child snatching, an approach evidenced also in three of the bills under consideration by your subcommittee, H.R. 1290, H.R. 3654 and H.R. 7291, as well as by the child snatching provisions of S. 1722, the proposed Criminal Code legislation, as reported by Senate Judiciary Committee on January 17, 1980.

"Child snatching" refers to the abduction of a child from the parent with legal custody by the parent without legal custody. Implicit is also the wrongful retention of a child by a non-custodial parent after the expiration of a visitation period. This practice has been increasing in volume over the last decade, most likely as a direct result of the filtering down of the knowledge that by removing the child to a new state it might well mean a "new ball game" for the participants, giving the non-custodial parent a second bite of the apple as applied to custody awards. All too frequently, the state of the child's new location has held a de novo hearing (to insure itself that the child's best interests are being cared for), regardless of the expense or emotional effect on all concerned. Consequently, this frequently has caused the child and the parents to remain in an uncertain litigation status for several years.

According to social service officials, between 25,000 and 100,000 child snatching incidents occur each year. (See Remarks of Congressman William F. Walsh, Congressional Record, July 13, 1978, E 3739). The ABA believes the time has come to take action to curb this problem.

The Family Law Section of the ABA views the sensitive and emotional problems of child custody litigation to be the most pressing problems faced by lawyers in the family law area. Major concerns in this area are the issues of parental child snatching and similar unlawful practices. The Section has given priority status to the child snatching evil in the selection of matters in need of immediate attention.

To a large extent, a solution for these cases, involving courts of two states, is provided by the Uniform Child Custody Jurisdiction Act which generally specifies that one state will respect custody orders worked out in other states. This Uniform Child Custody Jurisdiction Act (hereinafter referred to as the U.C.C.J.A. or the Act), was promulgated by the Commissioners on Uniform State Laws in 1968, and adopted by the American Bar Association in that same year. However, at first there was little action taken by the states with regard to the U.C.C.J.A. In fact, until three years ago, the number of states which had adopted the U.C.C.J.A. was only nine. Today about forty-four states have enacted the Act into law. Those jurisdictions which had not done so as of June 18, 1980 are, according to our best information: 1) Massachusetts, 2) New Mexico, 3) Oklahoma, 4) South Carolina, 5) West Virginia, 6) Texas, which appears to have localized it, and the three American jurisdictions of the District of Columbia, Puerto Rico and the Virgin Islands. Since the Act is not a reciprocal one it is incumbent on all adopting states to follow it even though the other state concerned has not adopted the Act. Although hopefully the Act will eventually be adopted nationwide, the concerns of children are too pressing to await this ultimate goal.

Additionally, the U.C.C.J.A. itself is not a cure-all for the evils involved in child snatching, and other necessary measures as contained in the ABA resolutions must be undertaken.

Of the five ABA Resolutions, Resolution No. III, which approved the child snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978, is most relevant to our discussion of H.R. 1290, H.R. 3654 and H.R. 7291.

A review of the provisions contained in these three bills reveals that they contain child snatching provisions that are substantially the same as the child snatching portions of S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978, and as approved in Resolution No. III by the Association's House of Delegates. Most of the differences between them and S. 1437 are mere clarifications.

We note some minor differences. For example, under § 1624 of S. 1437, a person is guilty of an offense if he intentionally restrains his child in violation of a child custody determination entitled to enforcement under the full faith and credit provisions, a valid written agreement between the child's parents, or the relationship of parent and child (absent a custody order or written agreement). This language is contained in H.R. 1290 and H.R. 3654. Additionally, section 5 of H.R. 7291, states that whoever restrains a child in violation of another person's right of custody arising from a custody determination entitled to enforcement is guilty of an offense. This change was made to ensure that those acting as agents for the abducting parent can also be held criminally responsible.

In principle, therefore, the criminal and civil provisions of S. 1437 and H.R. 1290, H.R. 3654 and H.R. 7291 are the same and thus the ABA supports, in principle, and encourages passage of legislation such as this.

We especially approve of the comprehensive approach to the problem of child snatching contained in these three bills.

The ABA has no position on H.R. 131 which would merely create a federal crime of child snatching unlimited by criteria of child custody jurisdiction. The ABA has recognized in its resolutions adopted August 1978 that federal criminalization of child snatching should, if it is to be rational and effective, be coupled with civil measures.

We approve of the fact that H.R. 1290, H.R. 3654 and H.R. 7291 are aimed at encouraging a parent who has snatched a child to return the child to the parent in lawful custody as opposed to being aimed at punishing the parent who has snatched his or her child. While the legislation makes it a misdemeanor to violate a valid custody determination, it creates a defense to prosecution where a defendant returns the child unharmed to the other parent within 30 days after an arrest warrant has been issued.

As stated by Senator Wallop in an article entitled "Children of Divorce and Separation: Pawns in the Child-Snatching Game," published in *Trial*, May 1979, pp. 34 at p. 37, this type of legislation "is offered as a comprehensive solution to the child snatching problem. The civil and criminal provisions combine to fill a void in existing laws which will greatly assist in reducing a number of child-snatching episodes in America . . . "

In addition to Resolution No. III, three of the ABA's other resolutions on the subject are encompassed by H.R. 1290, H.R. 3654 and H.R. 7291.

The substance of ABA Resolution No. I, that the legislatures of the various states which have not yet adopted the U.C.C.J.A. be encouraged to do so at the earliest opportunity, is clearly set forth throughout the three bills.

The adoption of legislation by the United States Congress to accord Full Faith and Credit to the child custody and visitation decrees of each state, as stated in the ABA Resolution No. II, is clearly set forth in § 1738A of these bills entitled "Full Faith and Credit to Child Custody Determinations."

Also, ABA Resolution No. IV, to amend the jurisdiction of Federal and State Locator Services, so as to expand their existing responsibilities to include locating parents who take, restrain or conceal their children, is clearly mandated by these bills.

It is my opinion that this type of legislation, when enacted into law, will go far in providing the comprehensive solution sought by all of us in our efforts to eradicate the pervasive and existing evils of child snatching. Due to the growing incidence of divorces (now over one million a year) and the ever increasing numbers of children involved in these divorces, the child-snatching epidemic must be stamped out. Perhaps new solutions will be devised to cope with the devastating results of family breakdown in the form of: 1) adoption of alternatives to the adversary system of child custody determinations; and 2) new forms of custody arrangements such as shared custody. These solutions may eventually cause some of the parents who would not otherwise do so to lose incentive to snatch their children. However, favorable action on this proposed legislation is urgently needed now.

We note that the child-snatching provisions of H.R. 6915, the proposed Criminal Code legislation currently being marked up by the House Judiciary Committee, is consistent with Resolution II of the ABA. We support its addition to the Code.

In conclusion, the ABA commends you for addressing yourselves to this widespread nationwide problem. We urge enactment of legislation such as H.R. 1290, H.R. 3654 and H.R. 7291 to help prevent child snatching.

On behalf of the Association, I thank the Chairman and the Subcommittee for permitting us to present these views.

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## APPENDIX A

### RESOLUTION OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION

### ADOPTED AUGUST, 1978

I

*Be it Resolved*, That the American Bar Association encourages the legislatures of the various states which have not yet adopted the Uniform Child Custody Jurisdiction Act to do so at the earliest opportunity.

II

*Be It Resolved*, That the American Bar Association urges the Congress of the United States to enact legislation which would require the courts of the states to accord full faith and credit to the child custody and visitation decrees of each state, pursuant to Article IV, Section 1, of the United States Constitution.

III

*Be It Resolved*, That the American Bar Association supports the child snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978.

IV

*Be It Resolved*, That the American Bar Association recommends that upon occurrence of a snatching of a child, and a request for assistance and relief by the custodial parent from whom said child was removed, the Department of Health, Education and Welfare, the State Department, the Justice Department, and any other federal and/or state agencies who can provide immediate assistance, make their existing resources available to such parent, and provide such assistance as is available for the location and apprehension of the child.

V

*Be It Resolved*, That the American Bar Association urges the United States Congress, in treaties, and the State legislatures, in statutes, to take appropriate measures to provide in extradition treaties and statutes that the removal of a child from a custodial parent, in violation of an existing court decree, to another state or country, be construed as an extraditable act.

## TESTIMONY OF DR. DORIS JONAS FREED, ESQ., MEMBER OF THE COUNCIL OF THE FAMILY LAW SECTION, AMERICAN BAR ASSOCIATION, AND CHAIRPERSON, CUSTODY COMMITTEE AND COMMITTEE ON RESEARCH AND STATISTICS

Dr. **Freed**. Thank you, Mr. Chairman, and members of the subcommittee.

Briefly, I want to make one correction. My name is Doris Jonas Freed, and I am a practicing attorney from New York City, where 95 percent of my practice is devoted to family law. I am a member of the council, not "chairman" of the Family Law Section of the American Bar Association, and I am also chairman as you said of the section's custody committee, and chairperson of its committee on research and statistics.

Mr. **Conyers**. Well, we will be delighted to make all of those numerous corrections.

Dr. **Freed**. Sir, I appear before you today at the request of the American Bar Association's president, Leonard [illegible]ofsky, to inform you of the American Bar Association's views on legislation to reduce the number of episodes of parental kidnaping.

Mr. **Conyers**. Are they for, or against?

Dr. **Freed**. I have the five resolutions adopted by the American Bar Association appended to my written testimony, sir, so I will not repeat them. Generally, they are in favor of the civil provisions of these various bills which we have been discussing today—such as H.R. 1290 and its companion bill H.R. 3654, and H.R. 7291; as well as the child snatching provisions of S. 1722, the proposed Criminal Code legislation as reported by the Senate Judiciary Committee on January 17, 1980.

Today, about 44 States, according to my best information, sir, have adopted the Uniform Child Custody Jurisdiction Act; and only 6 have not done so, such as Massachusetts, New Mexico, Oklahoma, South Carolina, West Virginia, and Texas, which appears to have merely localized it; and the three American jurisdictions of the District of Columbia, Puerto Rico, and the Virgin Islands.

Additionally, though, the stand of the American Bar Association is, as I have stated in my written statement, that the Uniform Child Custody Jurisdiction Act itself is not a cure-all for all the evils or all the instances of child snatching, and other necessary measures as contained in the ABA resolutions must be undertaken. And as, sir, contained in H.R. 1290, 3654, 7291, and S. 1722.

These criminal and civil provisions are similar to those adopted in the resolutions of the American Bar Association, and thus the American Bar Association supports in principle and encourages passage of legislation such as this.

We especially approve the comprehensive approach to the problem of child snatching contained in these four bills. We also approve of the fact that the legislation is aimed at encouraging a parent who has snatched a child to return the child to the parent in lawful custody, as opposed to being aimed at punishing such parent who has snatched his or her child.

The adoption of legislation by the U.S. Congress to afford full faith and credit to the child custody and visitation decrees of each State, the adoption of the provisions giving full faith and credit to child custody and visitation provisions, the adoption of the resolution pertaining to the Parent Locator Service, as well as the other matters discussed here today, are in my opinion and that of the American Bar Association the type of legislation which when enacted into law will go far in providing the comprehensive solution sought by all of us in our efforts to eradicate child snatching.

Now due to the growing incidence—nobody has mentioned this, I do not think, today—of divorces, now over 1 million a year, and the ever-increasing numbers of children involved in such divorces, the child snatching epidemic must be stamped out as soon as possible.

In conclusion, sir, the ABA commends you for addressing yourselves to this widespread, nationwide problem. We urge enactment of legislation such as H.R. 1290, H.R. 3654, and H.R. 7291.

However, I must emphasize that we are of the opinion, and the ABA is of the opinion, that the civil provisions in themselves are not enough of a deterrent; that we must also have a criminal provision like the one in H.R. 1290 in order to be an effective deterrent.

Now I have listened very carefully to all the testimony which has been presented today, and to the incisive questions presented by all of you gentlemen. There are a few matters I would like to clear up.

The question has been raised: Well, what if, before any child custody determination has been made by a State court, one parent decides, "Well, I'll probably get an unfavorable determination, so I'll just leave the State with the child."

Now the Uniform Child Custody Jurisdiction Act provides as follows: There remains jurisdiction in the home State of the child—which is the State where the child has lived with its parent or parents for 6 or more months. That jurisdiction remains for 6 months after the child is taken out of the State.

Therefore, there is the option—and this is my personal point of view and has nothing to do with the American Bar Association; I wanted to make that clear—what I do with my clients is: Immediately when a child snatching occurs, I go to court and obtain a decree giving my client, the parent left behind, custody. There is jurisdiction within the ambit of all the provisions of the Uniform Child Custody Jurisdiction Act to do such a thing. Now that was one answer. I think we have bandied this around enough. That is the answer to that problem.

Now we talk about danger to the child. As I am sure all you gentlemen know, today the uniformly accepted definition of "child abuse" concerns not only physical abuse but emotional or mental harm to the child. On January 30, in the Senate hearings on S. 105, there were people who testified to the fact that out of every 10 child snatchings, 6 or 7 of the children taken were never seen again by the parent left behind.

There was also an abundance of testimony, as the record will show, that when the parent was fortunate enough—the parent whose child had been taken—when the parent was fortunate enough to get the child back after a period of 6 months, a year, 2, or even 3 years, the child had suffered ineradicable trauma which took the form of nightmares, which took the form of the necessity of the child being for years perhaps under the care of psychologists and psychiatrists. I do not think there is much question that this child snatching, although perpetrated by a loving parent—subjectively a "loving parent"—because he or she (and mostly he, because up-to-date mothers have been favored in child custody determinations), I do not think there is much question that however loving the parent may be, the objective results to the child are really appalling, and that they do come within the definition of "child abuse."

I think, Mr. Hyde, that that will perhaps give a partial answer to the problems that you have posed.

It seems to me that the deterrent of a criminal sanction is completely essential, in addition to the civil measures which have been proposed today in all these various very excellent measures of which the American Bar Association approves.

Now in the few States—there are 38 States, I believe, which have so-called "penal provisions" against whatever they call a "child snatching," "child abduction," "custodial interference"—of all those 38 States, I believe in only 12 or 15 are such provisions really effectual. In other words, they do not have real teeth, and in most cases they are mere misdemeanors.

Now, I want to answer your suggestion about extradition, which is one thing of course in resolution No. 5 which the American Bar Association has gone on record in favor of.

We all know that it is very difficult to obtain extradition for anything except a serious felony. We hear the same arguments about the cost, and so on. If a combination of the civil provisions contained in these bills and the criminal provisions contained in the bills would be enacted into law, no longer would lawyers be compelled to answer a parent's question of "Well, will I be in contravention of any criminal law if I take the child?", and albeit reluctantly (assuming it is a State which has no penal provision against such snatching, or a State which has very weak penal provisions), "Well, of course you will be in civil contempt of the court order, but it is very improbable that you will be committing a crime."

I thank you gentlemen for the opportunity to express the views of the American Bar Association, and for me to express a few of my personal views. Hopefully, similar legislation to what has been proposed today will be enacted and enacted soon. I do not think that we have too much time to waste.

Thank you very much.

Mr. **Conyers**. Thank you, very much.

Gentlemen, are there questions?

Mr. **Hyde**. I just have one question. I agree with everything you have said, and I appreciate the enthusiasm and emphasis you have given to the subject. My problem is, however, if what you say is true, that every child snatching involves injury or danger to the child—and it may well be—that may create a problem with the FBI, because they do not currently have the resources to handle the estimated 25,000 to 100,000 cases each year. So, perhaps we should try to get them into the act on the most egregious cases, then gradually work them down to the others.

Dr. **Freed**. Mr. Hyde, I have thought a lot about this. I think what we are trying to do is not punish, but to reduce the incidence of child snatching. I think that, were there real deterrents such as would be provided by these bills, plus the fear of criminal prosecution—just the fear—we might have not only a reduced incidence of child snatching, but perhaps, on thinking it over, the parent who had snatched the child—unless such parent were really irrational, and many of them are, as has been said here today; there is nothing for creating irrationality like family problems——

Mr. **Hyde**. You see that in probate a lot.

Mr. **Freed**. Yes. [Laughter.]

I believe, however, that the deterrent effect would be such that—I have something more to say on this—but it would not face the FBI or the Parent Locator Service with such a terrible problem. However' I do believe, if the taxpayers in this country were asked, "Do you think it is more important to go in pursuit of a burglar? Or do you think it is more important to collect money?" I think that was raised, exhaustively, today. "Or would you object to being taxed more to save the lives of hundreds and hundreds of thousands of children?"

If we say, sir, that the children are the future of the United States—and we certainly hear that; at least it is given lip service—then, is any cost too much to pay for even saving, even, let us say if it is 25,000 children a year. This has been going on since 1970 in any event, and is going to be on the increase as I see it with the divorce rates still on the ascendency—do you think the cost would really be of vital importance to the pocketbook nerve of the average citizen? Because I do not.

I have one more thing to say, if I have not overstepped my time. Have I, sir?

Mr. **Hyde**. That is up to the chairman, who is most indulgent. If he would grant a little more time, I just want to say that I think you, and the chairman, and Mr. Gudger, and certainly the staff and myself, agree that every year should be the Year of the Child. Right?

Dr. **Freed**. Mr. Conyers, may I add that perhaps the real root of the trouble does lie in the adjudication of child custody determinations in the adversary setting. Perhaps, as we have been trying to do for many years, if we can find a fairer, better way of satisfying both parents in custody determinations so that fathers will not be told immediately by their lawyers, as they are not being told anymore, "You do not have a chance; do not try," so that they can be told, "Well, maybe a sharing of custody will be a good idea"—because I have never seen a satisfied parent, satisfied with the custody decision, want to snatch his or her child. I believe perhaps that is the next thing we should work on.

Mr. CONYERS. I think you are quite right.

Mr. Gudger, do you have questions of the witness?

Mr. GUDGER. I want to be certain that I comprehended the position of the American Bar Association on criminal sanctions for child snatching or child kidnaping in the frame of reference we have here.

Is it the bar association's present position that it does support criminal sanctions of a Federal nature?

Dr. FREED. I would like to read you the position of the association—this is resolution III appended to my written testimony:

> *Be it resolved*, That the American Bar Association supports the child snatching provisions set forth in S. 1437, the Criminal Code Reform Act of 1978, as passed by the U.S. Senate on January 30, 1978.

Now, sir, these bills, H.R. 1290, and H.R. 3654, do not only talk about child custody determinations. They talk about all three. It is. only H.R. 7291 which limits itself to child custody determinations. The criminalization of child snatching which is supported by the American Bar Association does have all three items listed.

There was one other thing I would like to clarify. All the civil provisions are aimed at children of 18 or under. The criminal provision alone is aimed at 14 years or under. So that will answer some of the things that were raised about would a child of 15 or 16, et cetera.

Mr. GUDGER. And of course you have made it quite clear, I think, by your testimony and by the resolutions that you have offered here, that the full use of Federal programs which would assist in locating the absconding parent and the child, that you would support that?

Dr. FREED. Very definitely, sir. The giving of full faith and credit, for which there is ample constitutional fundament in both the commerce clause and in the full faith and credit clause, and the use of the Federal Parent Locator Service, the urging and the push for the enactment of the UCCJA in those States and the three jurisdictions which have not yet enacted it; and the use of the Parent Locator Service, in addition to the criminal sanctions in H.R. 1290 we feel that it is absolutely essential to have, perhaps for deterrent purposes only, and we do not overburden the FBI—Heaven forbid. [Laughter.]

But in any event, that is the stand of the American Bar Association.

Mr. GUDGER. Let me get my final question in, and that will be it.

That would apply to every situation with respect to an absconding parent who takes a child, whether he takes it after a court decree, whether he takes it after a consent or contractual relationship has developed?

Dr. FREED. And a written agreement.

Mr. GUDGER. Or whether he takes it out of the State where the child has resided for 6 months?

Dr. FREED. Six months or more.

Mr. Conyers. Well, we want to thank you, Dr. Freed. You are a most appropriate witness to conclude the hearings with for today. Thank you for staying for this.

The subcommittee stands in adjournment.

[Whereupon, at 4:43 p.m., the hearing was adjourned.]

# APPENDIX

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### Statement of Dr. Mariel Meyers, Lyon, France

I wish to thank the House Sub-Committee on Crime for inviting me to attend their hearings on the subject of parental kidnaping on June 24, 1980. The statements made by the witnesses—particularly that of Doris Jonas Freed, whose practical experience in family law and custody disputes was clearly demonstrated in her presentation—and the attention given to the subject by the committee impressed me greatly.

Because my principal goal as a physician is to promote health through prevention, which necessarily must begin in uteri, I am concerned always with the physical and psychological health of children. Most of those with whom I have contact, suffering from malnutrition and poverty, need never fear kidnaping, by a stranger or a relative. Still it does not escape me that kidnaping truly is a crime against a child, an assault insidiously and intimately violent as rape. To condone it because the victims cannot articulate their exquisite agonies or fear reprisal from an adult in whose vindictive hands they may be thrust again at any moment by the will of God or man is in itself a crime. It is incredible that the law, still permits, even encourages one human being to inflict this injury on another outrageous that it should do so in the name of love. Again I ask myself, what is the function of law in America: to protect the innocent, the helpless, the weak, or to promote the interest of the powerful.

The simplest remedy to parental kidnaping which Congress has at hand, and one which would simultaneously and unequivocably affirm that a child is not chattel, but truly a unique individual, with inalienable rights protected by law and man, would be to eliminate the phrase which specifically excludes parents from the Federal Kidnaping Act's operation.

Since I've not had an opportunity to read the proposed resolutions (H.R. 131, 1290, 3654, 7291 or S. 1722) I do not know what advantages they may have over the simple remedy, or if, in fact, Congress has a natural aversion to simple solutions. However I suspect that the two major impediments to criminalization of parental kidnaping are (1) the tendency of many elected representatives to regard their own children as property, and (2) a reluctance to accept that the passions, temptations, and drives which move individuals to criminal activity exist among those commonly believed immune by virtue of their socio-economic level.

However, I would like to emphasize that this is precisely the socio-economic group in which the deterrent value of criminal arrest, charges, and conviction has greatest value. Criminalization would mean that a non-custodial relative, no matter how highly motivated, would have increased difficulty in finding accomplices. The deterrent effect may be expected to spill over to prevent both directly and indirectly parental abduction of those children not yet under the shelter of a custody determination: directly, again because those asked to collaborate in the pick-up or subsequent concealment of a child for their own protection will be encouraged to determine if a custody decree does exist; indirectly, because the fact that kidnaping harms the child will have been given official sanction and credence.

Mr. Mullen, in particular, emphasized repeatedly the fitness of the state courts for making custody determinations. I too believe that matters affecting the welfare of children can best be settled by the courts with most access to the child's antecedents. But I would encourage civil resolution by the expedient of defining kidnapping:

> When a court order establishing custody of a minor child has been issued and a child is held more than 24 hours without posting a written notification or the child's whereabouts to the legal custodian or the court of jurisdiction, the incident shall be termed kidnaping.

Presumably the court, on the basis of the child's age and health, conversations with the child if possible, records from past investigations, and allegations or documented evidence in the letter of notification can decide within three days whether the child's best interests can be served by notifying the legal custodian of the child's address (presumably the custodian was notified immediately that the child's whereabouts were known), and order a new hearing, request return of the child, assign an attorney from either community to represent the child, or utilize any other measure or combination of measures available in that state for the protection of the child. However, the immediate decision as to whether the child's interests can best be served by resolution in a civil or criminal court is the responsibility of the person who has physical but not legal custody of the child. (It is to be regretted that we do not know if Solomon awarded visitation to the female who claimed she would rather have her alleged child cut in two than see it whole and healthy in the arms of another.)

Obviously I'm less generous than the American Bar Association with the time given an abducting parent to decide whether to be seen as a law-respecter motivated by sincere interest in a child's welfare or a law-breaker willing to subject a child to the uncertainties of a fugitive's life and a potentially dramatic confrontation with authorities of the federal enforcement agency. But I'm acutely aware that a child's vulnerability to irreversible damage of soul, mind, and body is so much greater than an adult's. A month can be a lifetime, if not eternity. Perhaps 24 hours is even too generous: in an infant the entire course of the untreated and relatively common bronchopneumonia from the first symptom to death may be covered in a few hours. How easily an adult preoccupied with problems of flight and concealment and insensitive to the needs of the child—and only someone insensitive to the needs of children could kidnap a child—could postpone too long seeking medical attention. And the often hidden, but just as often permanent, spiritual harm must be assumed to increased with the passage of time. Thus, for all concerned, generosity and sympathy to an abducting relative can best be withheld until the child is secure in his familiar environment. Faith that judges in criminal courts are capable both of appreciating the full range of factors operative in parental kidnapping and of acting generously may be assumed from such items as that reported in the Washington Post on July 4, [illegible]: a judge suspended the sentence of 15 years imposed on the person convicted [illegible] kidnaping Walter C. Lee on the first day of his life. If someone's freedom is to be restricted, if someone's soul is to be crushed under the exceedingly slow, and sometimes chained or spiked, wheels of justice, if someone's future is to be compromised because of adults' negligence, or ignorance, or arrogance before the law, let it be someone other than a child.

I have asked my daughters to describe for the committee their feelings as victims, and in a sense continuing victims, of a parental kidnapping over 8 years ago. Though they cut through the web of intrigue which stretched half way across the continent and back almost a decade in time by spontaneously running away from their abductors within minutes of their discovery of my whereabouts, the snatch team, which included officials of the United States Department of State and Justice and foreign immigration agents, guillotined their childhood. When what they needed most to support them during recovery from the injuries of the cross-cultural snatch and a senseless, unnecessarily long and harassing custody investigation—in which their interests and well-being patently were sacrificed to those of any and everyone else—was to return to their home, back to the familiar language, order, friends, school, climate, pets, we found the border closed to us. Eight years ago the federal officials of neither country would accept responsibility for that decision, much less for support of the snatch itself. Today, both governments maintain that none of it occurred, that my daughters and I imagined it all.

As background to my daughter's stories I can offer the following:

In January 1964, just after we celebrated the first birthday of our youngest daughter Ann with a cake baked by Susan, then four by virtue of her birth just 4 days before the adoption of the International Charter for Children's Rights, the children's father, with a great show of arrogance moved down to the living room couch. Shortly thereafter, with a greater show of How-Abused-I-Am, the youngest tenured professor Oberlin College had ever had "moved out of the house—rented in anticipation that he would succeed eventually in getting me to grant a divorce—if he couldn't get me committed or talk me into killing myself first.

A few months later, legally separated and supported by a grant obtained on the basis of a paper I had written for him—according to James Tobin the best he'd written until that time—left Ohio and did not return to take up residence again until September 1965. By that time he was married to one of the young women with whom he had co-habited openly for more than a year, in Oberlin and elsewhere, and of whom he'd bragged often to me. Presumably she's the one who deliberately remained in his bed until Susan and Ann arrived for a day's visit, even though we had just as deliberately arrived, in order to avoid such accidents, an hour late. (One of his favorite expressions after he became a father was, "If my daughters are still virgins when they're 16, I'll pay someone to sleep with them". Few adults would recognize immediately his attitude and exhibitionist behaviour was essentially a reaction and protest to the excessive sexual repression of his own childhood and youth. How could his daughters at puberty evaluate such views and examples?)

The divorce agreement approved by the court in it's decree in July 1965 gave me full custody of the children with the right to establish residence in any state or country. Visitation was not clearly defined because he was not interested. It was the children—or rather the time and energy they required of me—which had been primarily responsible for his interest in divorce. However, it should be noted that his own parents had divorced when he was 3. He was in the almost exclusive care of his grandmother and mother until the age of 6. He relates that at that time his own father successfully took custody by refusing to let him return at the end of a Christmas visit to his mother's residence in Holland. His mother, anything but the traditional, indulgent, child-adoring grandmother in 1960, may not have tried very hard to retrieve a son already under psychiatric care after eviction from a Dutch nursery school for an attempt to scissor out the eyes of a little girl. And a woman who as a Dutch citizen had the ingenuity, courage, and loyalty to cross the German-Dutch border repeatedly in the 1930's in the service of her fellow Jews would not have been easy to dupe. At the same time, in 1936 in Germany, who would have advocated that the interests of a child from a well-recognized Jewish family, even a wealthy and influential one, would be better served in Berlin than in Amsterdam? At any rate, in the custody of a Prussian aristocrat, caricaturally long on theory and short on practice, he was destined to spend his life in a series of boarding schools, in America after 1937. Apparently no attempt was made to assist his mother during the holocaust, but she survived. Eventually she got to America and found her son—a student at Swarthmore College.

Thus, my husband's childhood had not prepared him emotionally or experientially for either marriage or parenthood. It did prepare him—superbly—to be a parental kidnapper when at Christmas time in 1971, the 35th anniversary of his own abduction, U.S. consuls set the stage. At that time, for some unknown reason, when foreign immigration officials detained me because I did not have on my person sufficient documentation to prove my admittedly unusual story—even the dean of my medical school did not know that his government provided a few scholarships for foreign students, U.S. consuls refused to help me rejoin my children until the documentation could be obtained (or to assist the children to rejoin me). I could not even communicate to the girls the nature of the problem; then aged 8 and 12 they easily could have picked up within hours supporting, if not definitive documentation. Subsequently, the consul, "with his blessings," gave the children to their father and his still-barren second wife. Apparently he urged that I be deported (a "criminal" because of a violation of a divorce decree) and that none of the three of us be permitted to return to our home in the country where we had spent nearly all of the previous 3 years. Understandably, even the wife of the president feared to intercede, though when I first approached her she promised that we could go home within 2 weeks—in front of t.v. cameras and perhaps 100 citizens of both countries.

The three of us are still traumatized. We don't even know why it happened: their father's second wife allegedly left him because he doesn't like, or want, children. But I think that if parental kidnapping had been recognized as the crime it is, it would not have happened.

(We spent most of the summer of 1972 sitting on the border, in daily anticipation of a return home. At that time Susan wrote a letter to the president's wife. I translated it into English and she sent it to the American ambassador. I'm including a copy of that now, in appreciation that she may not be ready to speak out against this kind of crime now, or ever.)

## STATEMENT OF SENATOR MALCOLM WALLOP

Mr. Chairman, over a million children every year are touched by divorce or separation. Adjusting to this new family situation is not easy for many youngsters. It is virtually impossible for the tens of thousands of children who fall victim to child-snatching, the restraint or concealment of a child from one parent by the other parent. Congress has turned its attention to this desruptive, abusive conduct because of its damaging effect on children and because of the inherent difficulties states have in resolving the multistate conflicts that so often ensue. I thank you for convening this hearing and for the opportunity to share some of my observations on child-snatching. I might add that it is encouraging to me as the sponsor of S. 105, the Senate version of the Parental Kidnapping Prevention Act, and to parents and children across this country who have long awaited federal action, that you have scheduled this hearing with time enough remaining in the 96th Congress to act on this important legislation.

S. 105 and its companion measures, H.R. 1290, H.R. 3654, H.R. 6915, and H.R. 7457 are, essentially, child welfare bills. They are designed to assist states in the enforcement of their child custody laws, to assist parents in the location of their abducted children, and to punish parents who, without regard to the safety and emotional well-being of their children, and in violation of enforceable custody or visitation rights of the other parent, deny these children access to, or communication with, their other parent.

Although there are countless variations on what has been described by the American Bar Association as an 'evil' practice, certain common elements exist. Witnesses in the Senate hearings in January 1980 and April 1979 outlined the following common denominators:

The child is susceptible to the whims of both parents. Indeed, there are many victim-fathers who are quick to dispel the notion that only women suffer the trauma of losing a child to child-snatching. In each case, the child is denied access to one parent by the unilateral actions and efforts of the other parent. Contrary to what one might suspect, love for the child is seldom the motivation for the snatching. Instead, revenge and ill will toward the estranged spouse or the desire to use the child as an instrument of reconciliation are among the selfish reasons that prompt parents to become child snatchers.

Child snatchings occur both before and after the granting of custody orders defining the custodial and visitation rights of the two parents. In the pre-decree situation, some court-shopping parents flee to another state in order to obtain a more favorable decree. After a decree has been issued, what often begins as a routine visit pursuant to that decree is transformed into a child-snatching by the non-custodial parent who extends the visit for an indefinite period at an undisclosed location.

Although some abducting parents notify the "left-behind" parent of their whereabouts, many others go underground with hopes of evading the legal or physical reach of the pursuing parent. In this concealment situation, a parent suffers extreme emotional anguish in trying to cope with all of the uncertainties of not knowing where and how the child is. Tremendous frustration ensues in the overt child-snatching case when the left-behind parent seeks to enforce his or her custodial or visitation rights in the state in which the child is found. Many parents eventually lose respect for the law after finding that the abductor-parent may be rewarded with physical, if not legal, custody.

For the children victimized by snatchings, the resulting psychological (and sometimes physical) harm cannot be overestimated. Child psychologists report that child-snatching induces fear, guilt, and anger in children, and causes severe, irreversible, and irreparable psychological harm in many cases. Indeed, because of its insidious effects on children, child-snatching has been characterized as a form of child abuse.

We have said that child abuse in any form is, as a matter of national policy, intolerable. S. 105 and its companion measures define for the first time a federal response to the child-snatching, child abuse problem which, in combination with state and local initiatives in this area, will go a long way toward reducing, if not eliminating, child snatching.

While many states have taken legislative steps to prevent child-snatchings through the enactment of criminal statutes and through the adoption of the Uniform Child Custody Jurisdiction Act, the success rate local officials have in intrastate cases plummets in the case of interstate or international snatchings. The laws and procedures in place in a state to locate missing persons, to prosecute *snatching parents and*, to a lesser extent, to try custody cases, are frustrated by the removal of the child from within the state's borders.

The pending federal bills respect the traditional role of the states in intrastate cases, and at the same time, they acknowledge and accept an appropriate role for the federal government in complicated interstate and international cases. Importantly, the legislation announces a federal duty to protect children from the traumatizing experience of being abducted and an equally important responsibility to facilitate the prompt return of the child to a secure and stable home.

S. 105 consists of three interrelated and interdependent parts. The first key section requires state courts to enforce and not modify the custody and visitation decrees of the states that have adopted the jurisdictional guidelines of the Uniform Child Custody Jurisdiction Act, (UCCJA). Embodied in this bill are limited exceptions to this general rule, and these exceptions are likewise to be found in the UCCJA.

The UCCJA was promulgated in 1968 by the National Conference of Commissioners on Uniform State Laws in response to the jurisdiction problems in interstate custody cases which breed child-snatchings. The prefatory note to the Uniform Act explains that the act was written to remedy the intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law:

"Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important which court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future."

To bring a fair measure of interstate stability to custody awards, the Uniform Act limits custody jurisdiction to the state where the child has his home or where there are other significant contacts with the child and his family. It provides for the recognition and enforcement of out-of-state custody decrees in many instances. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court. Access to a court may be denied to petitioners who have engaged in child-snatching or other similar practices.

Because the Uniform Act is a reciprocal act and may be freely adopted or rejected by the states, its effectiveness in interstate custody cases depends upon its adoption throughout the country. After a comparatively slow start, 43 states have now enacted the Uniform Act and one other has adopted the jurisdictional standards of the Act.

The full faith and credit provision of S. 105 provides protection to the left-behind parent in both the pre- and post-degree snatching situation. If a snatching occurs before a court determination of custody has been made, the "home state" jurisdictional base permits the left-behind parent to petition the court for a custody determination within six months of a snatching, even though the child is no longer in the state. Once an order has been issued, it is entitled to be recognized and enforced without modification by sister states, whether it is a temporary or permanent order. During the six-month period in which the home state has jurisdiction, it is highly unlikely (although not impossible, as in the case of emergency jurisdiction) that any other state would have jurisdiction to act in a custody case involving the snatched child. If, on the other hand, a custody determination is already in force at the time of the snatching, the state to which the child is taken would not as a general rule have jurisdiction to modify the existing decree; further, the state would defer back to the original court to make any adjustments.

S. 105 does not require the states to adopt the UCCJA. It will, however, serve as a significant inducement to the 7 states and the District of Columbia that have not yet adopted the uniform law to do so. Their custody and visitation decrees would then be entitled to recognition by sister states. (The 7 non-enacting states are Massachusetts, New Mexico, Oklahoma, South Carolina, West Virginia, Vermont and Texas.)

The most important immediate result of this provision will be the eradication of the haven state in which an abductor-parent may find refuge. Even those states will be required to enforce the decrees of other states that have adopted the UCCJA, or whose courts have acted consistently with its terms. This will remove one of the incentives parents now have for fleeing to other states in *search of a receptive forum.* Additionally, because both custody and visitation rights are entitled to protection, the incentive some parents have for snatching their children—the frustration of visitation rights—will be significantly reduced.

Assuming that all of the states adopt the UCCJA, this statute will retain its usefulness in those cases in which a court might ignore the state law but would be hard pressed to ignore both the state *and* federal law. Also, the combined effect of the laws should accelerate the process by which courts around the country interpret and apply the law uniformly. Finally, as pointed out by Professor Brigitte Bodenheimer in an article entitled "The International Kidnapping of Children: The United States Approach" (84 Family Law Quarterly, Volume XI, Number 1, Spring 1977):

"Once the principle of adherence to prior custody judgments is established nationwide, this will have a salutory effect on the treatment accorded to foreign judgments as well."

With the enactment of this section of S. 105, Congress will have accomplished what the Supreme Court on numerous occasions has failed to do—it will have established a rule of reason in multistate child-custody conflicts modeled upon the child custody law now in effect in the vast majority of the states. (To date, the Supreme Court has not interpreted the Full Faith and Credit Clause of the Constitution (Article IV, Section 1) to require states to give full faith and credit recognition to custody decrees entered by a court of another state in an action involving the same parties. *Halvey* v. *Halvey, Kovacs* v. *Brews, Ford* v. *Ford.* The Uniform Child Custody Jurisdiction Act was adopted in response to the chaos in child custody litigations left unresolved by these decisions.)

The second major provision of S. 105 makes available the state and federal parent locator services for purposes of locating snatched children and their absconding parents. The parent locator service was set up as part of the Child Support Enforcement Program to find parents who default on their child support payments, to establish paternity and to collect child support. This amendment expands the existing responsibility of the PLS to include locating children and parents who take, restrain, or conceal their children.

Parent locator services have been established in all 50 states, four territories as well as in the federal government. Since it began operating in 1976, over 1.1 million parents have been located and over $2.6 billion collected! In 1979, child support collections increased by 27 percent to more than $1.3 billion. Based on its huge success in locating parents in child support cases, the PLS should prove to be equally effective in child custody and parental kidnapping cases. This provision will promote cooperation among the states and the federal government in locating parents who snatch their children. Once the children have been found, legal proceedings and other appropriate steps can be taken to effect the return of the child to the place from which he or she was taken. This type of assistance will remove an enormous financial burden from the shoulders of parents who typically spend thousands of dollars trying to locate their children.

The third major section of the bill adds a new Section 1203 to Title 18 of the U.S. Code, entitled "Parental Kidnapping," in order to close the loophole in the existing federal kidnapping law, 18 U.S.C. 1201, which excludes parents from its purview. The bill would make it a federal misdemeanor for a parent or his or her agent to restrain or conceal a child in violation of a custody or visitation decree entitled to enforcement under the first section of the bill. Restraint of a child in violation of the statute would be punishable by a maximum of 30 days imprisonment, or by a maximum fine of $10,000, or both. Concealment of a child, the more serious offense, is punishable by a maximum fine of 6 months imprisonment, or a maximum fine of $10,000, or both.

Reservations about federal criminalization of child restraint and concealment have been expressed by a number of commentators on the theory that child-snatching is a "family matter", not a crime. It is important to point out that there is growing precedent for criminalizing parental kidnapping. Thirty-eight states have enacted felony statutes covering this conduct. These statutes range in kind from custodial interference to unlawful imprisonment to parental kidnapping. Creating a federal misdemeanor offense is thus in step with the legislative policy judgments being made at the state level now that attention has been focused on the child-snatching problem. In addition, foreign countries have also passed national parental kndnapping criminal statutes. For example, our neighbor to the north, Canada, has established a firm anti-abduction policy which is reflected in its criminal laws. Despite the fact that a majority of states now have criminal laws against child-stealing, states face very difficult hurdles in enforcing their laws once the suspect has fled the state. The proposed federal misdemeanor offense which makes uniform the prohibition on child-stealing, should provide greater deterrence to the would-be snatcher since it can be enforced throughout the country unlike the analogous state enactments.

The criminal provision in S. 105 covers the typical child-snatching case in which one parent takes a child in violation of a custody decree or retains a child beyond the lawful visitation period. Under the full faith and credit provision, the left-behind parent in the pre-decree snatching case may obtain a custody determination in the home state within 6 months from the date of the abduction. If the restraint and/or concealment continues for the specified periods of time, the abductor-parent would be subject to prosecution. Private detectives, friends, or relatives who help restrain or conceal the child in disregard of an enforceable decree are also subject to prosecution under this section.

Neither the Federal Bureau of Investigation (FBI) nor the federal courts will become arbiters of custody disputes under the bill. Before federal criminal jurisdiction could come into play, the complainant-parent would be required to have a custody or visitation decree entitled to enforcement in accordance with this law. This imposes an affirmative obligation on the left-behind parent in the pre-decree situation to promptly petition the court for a decree. A temporary order entered on an ex-parte basis on behalf of the left-behind parent would suffice to activate the protections of the criminal law provided the notice provisions are complied with.

Should the statute fail to prevent snatchings, which is its primary purpose, it nevertheless encourages the parent who has snatched the child to return the child to the person entitled to custody or visitation. It accomplishes this result (a) by creating a defense to prosecution where a defendant returns the child unharmed within 30 days after an arrest warrant has been issued, and (b) by instructing the court to be lenient in sentencing a defendant who returns the child unharmed, although too late to take advantage of the 30-day defense. Retribution of the abductor-parent is, therefore, clearly secondary to the safe and prompt return of the child.

There are other areas in which current federal policy fails to deter and may even promote child-stealing, areas in urgent need of reassessment by Congress. For example, not only does the federal kidnapping statute exempt parents from prosecution, but under an accomplice theory, it may also absolve an agent of the parent from criminal liability. For example, the detective who is paid handsomely to engineer the abduction may escape criminal liability even when force is used. Section 1201(c) should be amended to make clear that it does not cover agents or accomplices of a parent.

The Fugitive Felon Act, 18 U.S.C. 1073, which prohibits interstate flight to avoid prosecution of a state felony charge, has proven from both a legal and practical standpoint to be ineffective in returning child-snatching parents to the state whose laws have been violated.

The Federal Government is authorized by the so-called "Unlawful Flight to Avoid Prosecution" statute to investigate cases arising under State law in which the alleged parent has fled from the State. Although prosecution could be brought by the Federal Government, as a rule this does not occur. Instead, the Federal Government defers to the States for prosecution of the State violations under State law.

Currently, the Justice Department has identified parental kidnapping cases for separate and very sparing treatment without specific legislative mandate to do so. As embodied in the U.S. Attorney's Manual, title 9 (Criminal Division), no complaint will be authorized in cases charging a parent with kidnapping or enticing away a minor child without the express prior approval of the Criminal Division, and then only in rare instances.

Parental kidnapping is one of the only, if not the only offense for which the Justice Department has imposed an additional set of criteria for issuance of a "UFAP" warrant. A parent must show that the child is in imminent danger of physical harm. Emotional injury does not suffice.

Not only is this contrary to our child abuse policy which covers both physical as well as psychological abuse, but it also imposes a virtually insurmountable burden on the left-behind parent who typically does not even know where the child is, let alone what condition he is in.

For all intents and purposes, under current departmental policy it is next to impossible to obtain a warrant. There have been a handful of parents who have obtained warrants, leaving others wondering whether the Justice Department does in fact dispense justice in a fair, impartial and equitable manner.

I firmly believe the Department of Justice policy of selective intervention under the UFAP statute in child-stealing cases must be changed. The imminent harm test must either be dropped or expanded to include emotional and psychological injury to the child. My preference is definitely the former.

I recently offered an amendment to the Department of Justice Authorization bill for fiscal year 1981 which earmarked up to $1,000,000 from the FBI's funds for meaningful enforcement of the Fugitive Felon Act in child-snatching cases. This amendment passed the Senate as part of S. 2377. In the case of parental kidnappings which are deemed by State law to be felonies and which involve the crossing of State lines, the amendment makes clear that the Federal Government does, as a matter of policy, have a real and direct interest in assisting States in returning alleged felons so that they can be brought to justice under State law.

Thirty-eight states have felony statutes for interstate child kidnappings. To deny these States the valuable investigative abilities of the FBI is to thwart State policy, which certainly should not, and must not be, our national policy.

By investigating parental kidnapping cases arising under State criminal law, the Federal Government would not be involving itself in domestic relations controversies. Rather, the FBI would be assisting State criminal authorities in enforcing State laws by helping in the location and return of the abductor-parent. If this has the secondary effect of facilitating disposition of the related civil custody proceeding, then this should be viewed as a desirable byproduct, but not the end in itself.

The Senate having acted, it is now up to the House to examine the need for FBI intervention under the Fugitive Felon Statute in parental kidnapping cases and to take action to that end.

In the international arena, U.S. criminal extradition treaties reflect a national policy of indifference to parental kidnappings and stand as invitation to international abductions. The federal government routinely denies extradition requests from foreign governments for violations of their child-stealing laws, and refuses assistance to U.S. citizens and state governors who seek to have individuals extradited for violations of custody laws.

The U.S. passport policy provides only limited deterrence to international child-snatchings. Passports will be denied at the parent's request if the parent presents a copy of a court order awarding him or her custody, or a copy of an order restraining the removal of the child from the state or the country. Although applications executed in the United States can be denied on the basis of an order issued by a court of any state, under existing regulations applications executed abroad can be denied only upon presentation of an order issued by a court of the country in which the application is made. This forces the parent in the United States to go to court in the foreign country to obtain a vaild decree in that country, a time-consuming, costly, and emotional process. With respect to passport revocations, under a recently revised rule, the U.S. Department of State will revoke a passport in a child custody situation only if the bearer of the passport is subject to a court order stemming from a criminal felony matter. Under these circumstances, the device of passport revocation will do very little to prevent most abducting parents from leaving the country with the child.

Both our extradition and passport policies should be reexamined in light of our national objective of deterring international snatchings and in returning abductor parents to the country seeking their extradition.

While we here in Congress are considering this child-snatching legislation, the Special Commission on Child Abductions of the Hague Conference on Private International Law is in the final stage of drafting a Convention on the Civil Aspects of International Child Abductions. The purpose of that convention is to prevent child abductions by putting would-be abductors on notice that their removal of a child to a foreign country, or their wrongful retention of a child abroad, will result in the prompt return of the child to the country from which he was removed. This will restore the status quo that existed before the child-snatching occurred so that the snatcher is not rewarded for his or her actions. The next and possibly final drafting session will take place this fall in the Hague, after which the convention will be available for signature. The United States is one of twenty-three countries participating in the convention.

If the pending federal legislation is enacted, the U.S. will have succeeded in the year 1980 in making substantial inroads into the child-snatching problem.

If we fail to act, we will have disappointed thousands of parents and ignored countless children who may well suffer long-lasting emotional consequences from our neglect.

The welfare and well-being of innumerable children is at stake. We have a duty to protect them from the traumatizing experience of being snatched and to see to it that they are restored as quickly as possible to a secure home environment. If we in Congress can establish a strong national policy against child-snatching, we will have performed an important leadership role. The winners will be children, parents and society at large.

I will conclude my remarks by offering to assist you in whatever way I can in your consideration of the Parental Kidnaping Prevention Act.

## STATEMENT OF THE CHILDREN'S RIGHTS COMMITTEE, DIVISION V (CRIMINAL AND INDIVIDUAL RIGHTS), DISTRICT OF COLUMBIA BAR

The Children's Rights Committee of the D.C. Bar was formed earlier this year to address the special problems facing children. The members of the committee are attorneys who represent children as individual clients, represent the interests of children through public interest groups, or otherwise have a particular interest in effects of our legal system on children. Our goal is to promote, protect and defend the rights of children. We are particularly concerned for those children who are not residing in physically and emotionally secure home environments built upon mutual love and respect between the children and their parents. We recognize the efforts of this subcommittee to prevent child snatching as a major contribution to future security of some of these children.

Many concerned individuals and expert organizations have already informed this subcommittee of the magnitude of this problem. The media have reported many tragedies resulting from child snatching. We believe that every child who is snatched, even if he is not subjected to physically dangerous conditions, suffers substantial and possibly permanent harm.

We favor congressional action, within the framework of the Constitution, to prevent such harm. Continuing reports of child snatching demonstrate the inability of state legislatures and courts to prevent such acts. A state's power is limited by its physical borders. Only through federal legislation can we promote the rights of children and protect the integrity of state court custody decisions.

### FULL FAITH AND CREDIT

Section 3(a) of this bill requires full faith and credit to be given to child custody decisions under certain circumstances. This proposal is fully in accordance with the Constitution. The Constitution itself requires the states to give full faith and credit to the judicial proceedings of sister states.[1] Congress is given the power to enforce this clause through legislation. In 1790 the first Congress mandated that judgments should receive the same faith and credit in any court in the country as they would receive "by law or usage in the courts of the state from which they are taken. . . ."[2]

The framers realized that this clause limited the rights that the states would have enjoyed as independent nations. However, the clause was necessary for the creation of a federal system, to create one nation out of several independent states.[3]

The full faith and credit clause does limit the ability (formerly the right) of a state to relitigate issues previously adjudicated in another state, as would this bill.[4] But the clause also increases the effectiveness of those state court decisions which are properly rendered, as would this bill, by precluding disgruntled litigants from seeking a different decision from seeking a different state court.[5]

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[1] Art. IV, Section 1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." For a brief legislative history of this clause, see Jackson, "Full Faith and Credit—The Lawyer's Clause of the Constitution" 45 Columbia Law Review 1, 1-5 (1945).

[2] 28 U.S.C. 1738.

[3] See *Johnson* v. *Muelberger*, 340 U.S. 581, 584 (1951); *Sherrer* v. *Sherrer*, 334 U.S. 343, 355 (1948); *Milwaukee County* v. *White County*, 296 U.S. 268, 276-7.

[4] *Sutton* v. *Leib*, 342 U.S. 402, 407 (1952).

[5] *Elkind* v. *Byck*, 63 Cal. Reptr. 448, 45 (1967).

When a cause of action arises within a state, the full faith and credit clause has no effect on that state's jurisdictional, procedural or substantive powers. Only when a party attempts to enforce that decision in the courts of another state does the clause take effect. If the first state lacked jurisdiction, the judgment need not be enforced.[6] Expressed differently, the clause "leaves each state with power over its own courts but binds litigants wherever they may be in the Nation, by prior orders of other courts with jurisdiction." [7]

This bill would have an analagous effect. A custody dispute arising within a state would be resolved by the courts of that state as provided for in state law. Any appeal, collateral attack, or attempt to relitigate the same issues within that state would be controlled by state law. However, if a party attempted to change custody of the same child in another state, § 1738A would take effect. If the conditions of subsections (c), (d) and (e) were met in rendering the decision, then it must be enforced without modification.

We believe that this proposal will further implement the intent of the framers of the Constitution who drafted and ratified the full faith and credit clause while fully respecting the inherent right of each state to regulate its internal affairs. The states should recognize that § 1738A is a guardian of the integrity of their court's decisions.

### PARENTAL KIDNAPPING

The full faith and credit provisions of this bill will protect a child from multiple, inconsistent custody decisions. The Parent Locator Service will assist in finding a snatched child. We believe that these two provisions will remove some of the advantages to be gained by child snatching, thus deterring parents from committing such acts. However, there also will be parents who will continue to snatch their children. These parents will not seek modification of custody through the courts. While some of these parents may be traceable through the Parent Locator Service, they can avoid service of process. Such a parent can move from state to state, or even leave the country, to avoid civil enforcement of the original custody decision. The case histories previously disclosed to Congress and widely publicized by the media, demonstrate that a few parents are not seeking a legal advantage. Rather, they are attempting to resolve the dispute unilaterally without the assistance of any court. Because this motivation for child snatching would continue to exist after the adoption of § 1738A and extension of the power of the Parent Locator Service, we support criminal penalties for child snatchers. Only through the classification of child snatching as a crime can we deter some ardent snatchers and provide the means to reunite with their custodial parents those few children who continue to be snatched.

The primary purpose of this legislation should be the prevention of child snatching and the consequent harm to its victims. At the same time, the penalty imposed on the offending parent should not be so excessive or inflexible as to prevent voluntary surrender. The right of each state to enforce its own laws within its own borders must be respected. Finally, the resources of the federal government should be used as efficiently as possible. Section 1203 carefully balances all of those interests.

The penalties imposed under § 1203 (a) and (b) are substantially lower than those imposed on kidnappers. Section 1203(f)(3), providing an affirmative defense if the child is returned unharmed within a certain time, will encourage parents to surrender the child voluntarily. Subsection (g) will likewise encourage surrender to obtain a reduced penalty. These provisions provide the criminal penalties necessary for deterrence, but are light and flexible enough to allow voluntary surrender. Because of the affirmative defense provided and the classification as a misdemeanor, we believe that even those parents who have snatched children will be able to reenter or continue in the work force.

The states are protected by this provision in two ways. First, the F.B.I. cannot become involved during the first sixty days. During that time, local authorities may investigate the case, seek the assistance of the Federal Parent Locator Service, and attempt interstate enforcement of the original custody decision or extradition without the interference (or assistance) of the federal government. After sixty days, the states will have the assistance of the F.B.I. in enforcing previous custody decrees. Such federal involvement will greatly increase the efficacy of the state court judgment. It is not a usurpation of states' rights as it does not modify the states' criminal code or judicial power in any way.

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[6] See *Williams* v. *North Carolina*, 325 U.S. 226 (1945) citing the early case of *Thompson* v. *Whitman*, 18 Wall 457, 462.

[7] *Johnson* v. *Muelberger*, 340 U.S. at 585. See also *Home Insurance Co.* v. *Dick*, 281 U.S. 397 upholding contractual limitations, shorter than those imposed by state law, on the length of time within which to sue on insurance claims. The Court found that this was a limitation on the litigants, not the states, consistent with the Fourteeth Amendment.

The Federal Parent Locator Service should be an efficient and effective tool for the location of many snatching parents. It should reduce the demands placed on the F.B.I. by this legislation. If the F.B.I. does become involved, useful information will be provided by the P.L.S.

The idea of the F.B.I. arresting parents is not pleasant. However, this bill creates a thorough, detailed plan to prevent child snatching. Every legitimate motivation for child snatching is removed. Even after a parent has snatched a child, he is completely absolved if he returns the child unharmed within thirty days. Before the F.B.I. enters the case, the other parent and the home state will have spent two months attempting to locate the offender. In some instances the non-offending parent will have traveled to several states or hired attorneys in several states to attempt civil enforcement. A parent who successfully defeats these efforts probably will not surrender to the home state without F.B.I. involvement. The F.B.I. should become involved only as a last resort. However, in those few cases where all other efforts have failed, the F.B.I. involvement is imperative for the safe return and protection of the child.

The F.B.I.'s duties in these cases, as in others, will be to investigate federal crimes and arrest the offenders. The F.B.I. will not have the authority to usurp a state court's power to make or modify custody decisions. The federal criminal courts will similarly enforce the federal criminal sections of this bill but have no authority over the underlying state court custody decision.

In conclusion, we urge the quick passage of this or similar legislation. After careful review, we find no constitutional infirmities. The rights of the states are protected and enhanced by each provision. The criminal provisions are strictly constructed to apply only in the most extreme cases. The penalties are relatively minor and are mitigated by the safe return of the child. This legislation should lead to increased effectiveness of state courts and a decrease in the number of children snatched.

# Single Parent on The Hill

JUL. 1980

Bob Westgate

**Child-snatching Bills Dead?** Rep. John Conyers (D., MI) finally scheduled a hearing before his Crime Subcommittee for late June on the House child-snatching legislation (HR 1290 by Rep. Charles E. Bennett, D.,FL. See *SINGLE PARENT*, March, July and December/79; January and April/80.) However, he cancelled a similar hearing last June.

The criminal penalties have been removed from the child-snatching portions of the House Criminal Code Reform Bill (HR 6915), and it is so huge, controversial and complex it might not pass this year. No action had been taken at press time on the Senate's reform bill (S 1722), which includes criminal penalties for child-snatching; Judiciary Chairman Kennedy had been off campaigning. No action either on the separate CS bill (S 105) by Sen. Malcolm Wallop (R.,WY).

It's doubtful that anything but major bills will be okayed by Congress before recess. It will be in session only eighteen days in July, twenty in August and eight in September before adjournment to campaign.

**Violence Victim Bill Opposed** Senate conservatives have been lobbying hard to defeat S 1843 to give communities and states $65 million in 1980-83 for shelters and programs for domestic violence victims. Republicans Orrin Hatch of Utah and S.E. Hayakawa of California sent out a "Dear Colleague" letter opposing the Domestic Violence and Services Act because they allege passage would set up an "OSHA" on the family. (OSHA is an acronym for the controversial Occupational Safety and Health Administration, which writes and enforces strict industrial safety regulations.)

Hatch and Hayakawa claim federal money already is being spent in this area, and "effective ways have been found...in every state and within each and every community to end the vicious cycle which we tritely call domestic violence." And the Conservative Caucus, lobby on the Hill for conservative interests, says its members "are without exception opposed to the legislation."

A spokesman for Sen. Alan Cranston (D.,CA), bill sponsor, said "there is no clear reading of how the conservative drive might affect the bill." Groups supporting it, like PWP, "have been working very hard, talking to senators and even taking them to existing shelters. And the White House has promised to lobby for passage," she added. Unfortunately, opponents include its floor manager, Sen. Gordon Humphrey (R.,NH). No vote scheduled at press time. The House version was okayed months ago.

**Better Pay Your Support!** This month the IRS may start to collect private debts for the first time in its sixty-seven year history. The new precedent-setting power has been virtually ignored by the nation's media. The debts are unpaid, court-ordered child support due families not on welfare, that states have certified they can't get. The proposal (April and May, 1980 *SINGLE PARENT*) has been okayed by a House-Senate conference committee and by the full House, 389-2, as part of a Social Security bill (HR 3236). Senate okay assured. The committee set no income guidelines and the law will affect debts back to "Day One." Sen. James R. Sasser (D.,TN) also will soon introduce legislation to make the IRS the debt collector for all federal agencies.

**New Child Support Plans** Mandatory payroll deductions for child support, like Social Security? That's the unusual proposal suggested by a University of Maryland economist to help separate the often tied-together issues of support and visitation. Prof. Barbara Bergmann, also a member of President Carter's Price Advisory Committee, asserts--like many others--that our present child support system "simply doesn't work." However, it's doubtful her idea will get much backing on the Hill from the IRS or the business lobby—neither of whom want any more tax collection duties.

Members of the Institute for Research on Poverty at the University of Wisconsin-Madison would do away with all welfare and income taxes--as we know them--and substitute a credit income tax. The "Watts, Jakubson and Skidmore Proposal" includes three support conditions: support standards would be established by a commission to help family courts and policymakers to set fairer settlements by dividing incomes across split households.

- The custodial parent would receive a minimum support payment for the child(ren) from a social insurance fund, whether or not the absent parent paid support. Such insurance would be reduced by about 70¢ for every buck paid in support to a break-off point where the insurance would be replaced by full support.

- Both parents would attach affidavits to their income tax forms that they were in compliance with support standards: either living with and sharing a household with the child, or making payments equal to a minimum standard or court-okayed agreement. Watts, Jakubson and Felicity urge that "inability to pay would not be an acceptable justification for noncompliance, anymore than it is now for nonpayment of taxes. Those who could not—for any reason--meet their child-support obligation would be required to pay a surtax on their taxable income."

**A monthly report on actions by the White House, Congress and Federal agencies of special interest to single parents and their children.**

Institute Director Irwin Garfinkel would take child support out of the courts entirely and substitute a public payment to the custodial parent depending on the number of childdren. The absent spouse would pay a tax based on a proportion of his/her income for each child not living with that parent...perhaps 10% for the first and 4% for each additional child.

FOCUS, the Institute's newsletter, claims, "All the complicating factors now inaccurately quantified in determining the amount of child support--the earnings of the wife, whether or not she remarried, the increasing expenses and responsibilities of the father (for example, if he fathers another family)--would be disregarded. Only the income of the father and the number of absent children would determine the amount of his liability."

### PA Okays "No Fault"

For the first time in 150 years Pennsylvania courts now can grant "no fault" divorces after ninety days, on the grounds of an "irretrievable breakdown," and if both parties consent. If one objects, divorce can be final after three years' separation and court-ordered counseling. The courts also can award rehabilitative alimony, to encourage the ex-spouse to become self-sufficient, as part of HB 640.

Grandparents, who have been winning visitation rights from courts and the states across the U.S., have no such statutory right in Virginia. The Virginia State Supreme Court has ruled that a broadly-worded portion of the state code giving family courts jurisdiction over visitation doesn't include visits to grandparents. *(West vs. King, 6 FAMILY LAW REPORTER 1074).* West Virginia, on the other hand, has okayed HB 988 which provides grandparents with such rights. In Georgia, SB 43 now gives the rights.

### Free Emergency Hotline Opened

The National Victim/Witness Resource Center in Alexandria, Virginia, has opened a free national hotline for those seeking assistance from, or referral to, 1500 rape crisis centers, spouse abuse centers, child abuse and elderly victimization programs or mental health and other emergency services. The hotline (800) 336-2497 is staffed from 9 a.m. to 5:30 p.m. EDT, Monday through Friday. In Virginia, call (703) 549-7239 prepaid.

### Social Security Revises Regs

The Social Security Administration is drafting proposed regulations to give benefits to surviving divorced fathers supporting their children who are entitled to children's benefits on their deceased mothers' earnings.

The regulations will be retroactive to January, 1979, when the District Court for the Western District of Kentucky held, in Yates vs. Califano, that the Social Security Act unconstitutionally denies benefits to a surviving divorced father. Interested persons will have thirty days to comment later.

### How Do You Say "Goodbye, Friends?"

This is my last column for *SINGLE PARENT*. I hope it has kept you informed about what's happening in Washington that affects you and demonstrated to lawmakers and bureaucrats here that thousands of single parents are closely watching how they legislate and regulate. Many thanks for an exciting five-and-a-half years. If I can answer your questions in the future, write me at 1052 National Press Bldg., Washington, DC 20045.

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# Child-snatching: The Game Nobody Wins

**Bob Westgate**

First Serial Rights

ARNOLD MILLER was one happy poppa this Father's Day.

It was the first one in five years when he knew for sure his son Mason was alive and well. "We had a quiet family celebration and it was a great day!" he commented later.

In June, 1974, Mason and his mother simply disappeared. The Millers were separated. Arnold remained in Washington, D.C., but had weekend visitation rights. His wife Toby had custody of their son and they lived in Maryland. One Friday evening that June when Arnold went to pick up Mason, both mother and son were gone.

Like most other parents in similar circumstances, Miller was frantic. He spent more than $14,000 in his heart-rending, unsuccessful search, receiving little response to his pleas for help from the police, the FBI, the Justice Department, and others.

After two-and-a-half years, Miller realized, "I've been putting myself first and my son second. I know my former wife well enough to know he's getting food, clothing, shelter and that he's in school. I have no doubt that he and I will get together in the future when he's older."

So he channeled most of his energy into his job as a systems analyst for the Postal Service and into organizing a clearinghouse of information on parental kidnappings, Children's Rights, Inc. (CRI, 3443 17th Street, N.W., Washington, D.C. 20010). CRI also provides personal counseling, a "Lend-An-Ear" or hot line phone service where new victims can talk over their problems with veterans, and actively lobbies for better state and federal anti-child-snatching laws (*SINGLE PARENT*, Sept. 1976). It now has 47 chapters, 23 hot lines and 5,000 members in 31 states and in India. An additional 4,000 persons receive CRI's newsletter, *Our Greatest Resource . . . Our Children.*

This spring Miller's story was told again in *PEOPLE* magazine. A former neighbor of mother and son recognized the boy's five-year-old picture, called Miller and told him they were living in New York State under another name. They had lived in five states since 1974.

He didn't waste any time. He was able to interest the distinguished family law attorney, Professor Henry H. Foster, Jr., of New York University, in his case, and they obtained a writ of *habeas corpus*. Mason's mother was ordered to bring him to an emergency custody hearing in a court near the small Orthodox Jewish community where they lived.

Afraid that Toby might grab Mason and flee again before the court date, Miller took the order to the head rabbi of the small yeshiva where Moshe—as Mason was known there—was attending class. They had a very emotional reunion.

Later, at the first court hearing, Miller got four days' visitation. During other court appearances, he was given permission to have Mason visit him in Washington for part of the Passover holidays, to call Mason three times a week, to see Mason on Sunday evenings in New York, and to have Mason come to Washington twice, while court-ordered home studies were conducted prior to additional hearings in June.

Despite his personal victory, Miller, now 35, isn't giving up his fight for effective laws to help wipe out child-stealing. However, CRI which relies solely on contributions, may be forced to go out of business for lack of funds.

In June Miller was scheduled to discuss the Child Custody and Abduction Prevention Act of 1979 (S 105) at the PWP Mid-Atlantic Regional Conference in Manassas, VA. Other panel members were to be Ms. Pat Hoff, legislative assistant to Sen. Malcolm Wallop (R., WY), the bill's sponsor; Ms. Stewart Oneglia, director of the Justice Department's Task Force on Sex Discrimination; and Charles Biddison, president of Male Equality Now (MEN).

This bill—and a similar one by Rep. Charles E. Bennett (D., FL), HR 1290—may be the most important pieces of federal legislation affecting single parents this year. Why?

Although between 25,000 and 100,000 children are snatched or hidden from one parent by another every year, there are no really effective local, state, federal, or international laws to prevent such acts. In most states, child-snatching is a misdemeanor, and it only applies when someone takes a child from a parent who has been awarded custody. In only six states—Maryland, California, Iowa, Wyoming, Florida, and Georgia, CRI says—is such an act a felony, where a parent can be extradited from another state for the offense. In actual practice, few *have* been. In fact, both federal and state agencies use the parental exclusion in the Lindbergh Act as an excuse not to get involved on the state, national, and international level. The FBI has always been very reluctant to intervene—even if a state issues a fugitive felon warrant—except when it can be proven the health and safety of the child are threatened and when public/political pressure is intense.

Sometimes even this type of pressure doesn't help. Susan Downer of Van Nuys, CA hasn't been as lucky as Arnold Miller. In 1976, her three youngsters were never returned after their court-ordered visit to her ex-husband, in New York. Apparently he remarried, liquidated his assets, and fled to Brazil with the kids. Bitter over her agreement to the visit, since then she has continually asked, "Why was I so stupid to obey the law?"

> **“ *Children are pulled back and forth three, four, even half a dozen times, as parents rush from state to state to get custody…* ”**

Downer claimed, at an April child-snatching hearing in Los Angeles, that she has spent almost a quarter of a million dollars trying to get her children back and that, despite intense Congressional pressure, the State Department would not okay a California extradition order against her ex-husband to bring him (and the kids) back from Brazil, even with an alleged agreement by the Brazilian ambassador to honor the order. She, too, formed a political pressure group—especially active on the West Coast—and has influenced California and federal legislation.

The State Department says it can help only by delaying the issuance of a minor's passport, *if* a parent warns the Department that the child might be taken out of the country without permission. The parent then must get a court order prohibiting the passport issuance.

Two U.S. delegates attended the Hague Conference on Private International Law, a two-week negotiating session on international child-snatching with representatives from 23 nations. Basically, it is hoped that by 1980 there will be an international treaty to facilitate visitation of children between parents living in different countries, help locate abducted children, and assist in their return.

Delegate James Hergen, Office of Foreign Litigation, Civil Division, Department of Justice, said the U.S. stands for "the immediate return of the child. Period. Let the courts of the country from where the child was abducted solve who was right and who was wrong." He added that, "It was decided that criminal charges against a parent are not the answer and that extradition of the parent is no assurance of getting the child back."

Hergen invited PWP members to send him their views so that he will be better able to represent the U.S. during treaty-drafting sessions this November. Write him at the above office, Washington, D.C. 20530.

Even the Supreme Court has refused to interfere in four custody cases involving child-snatching. For example, in 1947, Justice William O. Douglas said if a custody decree is modifiable in the state of origin, it may be freely changed by the courts of other states. And in 1977 the high court refused to hear a case where a mother snatched her five-year-old son from New Jersey before custody was awarded. The father was awarded custody by that state in her absence, but two weeks later Florida gave custody to her.

Why should there be *any* child-snatching at all?

U.S. District Court Judge Nominee Patricia M. Wald, when she was assistant attorney general for legislative affairs, wrote Rep. Peter W. Rodino, Jr., (D., NJ), chairman of the House Judiciary Committee, that ". . . individuals who are unsuccessful (or who expect to be unsuccessful) in a (child custody) action in one state, will attempt to evade that state's jurisdiction by taking the child to another state [illegible] relitigating the custody issue. The second state will often switch custody to the parent within its jurisdiction, thereby encouraging 'child snatching' by rewarding the *de facto* physical custodian, notwithstanding the existence of an order or decree to the contrary."

And with the federal Government enforcing payment of court-ordered alimony and child support, and court opinions divided on tying alimony/child support to visitation rights, some non-custodial parents decide they are being discriminated against, grab their kids and run.

Too often, parents with custody who have had their children stolen have resorted to "custodial vigilantes" like Eugene Austin of Foley, MO, and Bill Ralston of Cuba, NY, to conduct reverse snatches. Children have been pulled back and forth three, four or even a half dozen times as parents rush from state to state to get custody. And as detective-attorney-court costs rise in this tug-of-war, the parents become more bitter towards one another, and the children suffer serious emotional [illegible], or even physical injury or death.

Thirty-one states had passed the Uniform Child Custody Jurisdiction Act (UCCJA) as of a few months ago, and it was pending in nine more. However, California attorney Lawrence H. Stotter, retired chairman of the ABA Family Law Section, has testified that signing states have not used its provisions, have read it narrowly or interpreted it wrongly in making determinations or have ignored out-of-state orders entirely. And 19 states still have not signed it, making them potential child-snatching havens.

Miller, while supporting UCCJA, believes it has a number of flaws:

- One, it does not address child-snatching, but covers only custody.
- Two, its provisions apply *only* when a custody decree exists, and more than 70% of all snatchings occur *before* a decree has been issued. Until then both parents are assumed to have equal custody, and—even if one parent has filed a custody petition—either can take off with the kids without breaking the law.

- Three, a court has no way of knowing if another state might already have awarded custody to the other parent, unless it is so informed by the parent applying for custody . . . which is not likely.

- Four, no provision is made in UCCJA to locate and return a snatched child, and Miller alleges that only about 10% are ever found again. He was one of the lucky parents.

- Five, UCCJA is only a model bill (drafted by the National Conference of Commissioners on Uniform State Laws in 1968 to discourage court-shopping) and suggests "refugee" states can keep their options to assume jurisdiction over cases, and does not *require* them to ". . . give full faith-and-credit" to custody decrees rendered by sister state courts. Each state is free to adopt its own version.

Similar federal legislation last year, sponsored by Rep. Donald Edwards (D., CA), former Rep. John Moss and Sen. George S. McGovern (D., SD) gained little interest and failed to pass because it allegedly was unanforceable, vague, and infringed on states' rights.

Bennett's original 1973 bill didn't pass because it was too strong; it merely struck the "parental exception" clause from the Lindbergh Act. His first revision was too weak; it amended the Act to include a punishment of only a $1,000 fine and up to a year in jail. Neither bill would have applied when custody had not been awarded, and the FBI did not ". . . want to get into the child-collection business," one official testified. Many Congressmen also believed it would be hard to convict any parent of kidnapping under that law. "What jury would convict a loving parent for taking his or her own child?", they questioned.

Bennett's bill may have a tough time in the House again this year. It was referred to the Crime subcommittee, chaired by Rep. John Conyers (D., MI) who is dead set against any federal parental kidnapping law and who has refused to hold any more hearings since the one held in 1974 on the same subject, and to the Public Assistance subcommittee, because of the proposed expansion of the Federal Parent Locater System (FPLS). At present there are no plans to discuss the issue in any hearings that that committee may have on Social Security issues. In addition, the Criminal Justice subcommittee, which met in May to go over changes it wants in the Criminal Code, made no decision whether or not to bring up child snatching as an addition to the code.

However, Senator Wallop said his revised bill (it was first presented to the 95th Congress, passed the Senate but died in the House) contains changes suggested by the Justice Department, by witnesses at a House hearing last year on his original bill, and by others concerned with the problem. He feels it has a better chance of passage. Wallop has strong bipartisan support, with 16 co-sponsors including Sen. Edward M. Kennedy (D., MA), whose Judiciary Committee has responsibility for revising the U.S. Criminal Code, where the child-snatching provisions would go. The actual hearings may be held by the Criminal Laws subcommittee, headed by Sen. Joseph R. Biden, Jr. (D., DE), if he can be persuaded to hold them.

> *"Wallop's bill won't prevent child-snatching... it will encourage the parent to come out of hiding..."*

Senator Wallop has explained that S 105 would amend the U.S. Code to *require* state courts to "give full faith-and-credit to custody decrees rendered by sister state courts"—when it is in the best interests of the child to do so, under the provisions of the bill. The second—and perhaps most controversial section—would amend the Social Security Act to widen the use of FPLS to include "locating parents who take, restrain, or conceal their children." The FPLS was set up to find parents—mainly those whose children are on welfare—who refuse to pay court-ordered child support. The third section would make it a federal misdemeanor for "any parent, relative or other person (i.e., private detective, friend, or other relative) . . . to snatch and transport a child across state lines in violation of a custody determination entitled to full faith-and-credit" under the law.

It also creates two new federal offenses: restraining a child (under 14) without good cause for more than 30 days, punishable by up to 30 days imprisonment and/or a fine of up to $10,000, and concealing a child without good cause for more than seven days, punishable by a jail term of up to six months and/or a fine of up to $10,000.

By adopting the "home state" provision of UCCJA, Wallop asserts "one of the major incentives for child-snatching will be eliminated." The "home state" is the one where the child has lived continuously for six months prior to the start of a custody case. The home state also would retain jurisdiction to make or modify custody orders for six months after the child's departure.

Wallop's new bill also *could* eliminate some FBI and Justice Department opposition: one, by postponing the FBI's entry into a case until 60 days after local police, state and federal PLS have been unsuccessful in locating the missing parent and two, by not requiring federal courts to become the arbiters of custody disputes, either. But Miller believes Wallop's bill is flawed in that a person could be found guilty of child snatching if he restrains or conceals a child, in violation of any person's custody or visitation rights, only when a valid custody order exists. He said Bennett's bill also covers instances when a separation agreement exists, and—if there is no custody decree or separation agree-

*(See CHILDSNATCHING, p. 44)*

## CHILDSNATCHING

—from p. 11

ment at all—when the relationship between the parent and child, or guardian and ward, is violated. CRI wants "all victims of child-snatching" to be eligible for assistance under the law, not just a child fortunate to have been under a court order at the time of such an act.

Even his bill won't "prevent" child-snatching, Wallop cautions. However, it *will* encourage the snatching parent to come out of hiding and return the child in two ways: "First, it creates a defense to prosecution where a defendant returns the child unharmed to the other parent within 30 days after an arrest warrant has been issued. Second, it instructs the court to be lenient in sentencing a defendant who returns the child unharmed—but too late to take advantage of the defense," Wallop stated. Sen. Wallop will address PWP's Atlanta convention this month.

Los Angeles District Attorney John K. Van de Kamp has testified that "the deterrent value of this legislation, in my view, is undermined" by the 30-day provision, which leads "to the short-term, unauthorized taking of children. An abducting parent can go scot-free under (the proposed) federal law, if the child is returned within 30 days." He also recommended that the FBI enter the case *immediately*—or within 7 days—when there was evidence a federal crime had been committed—i.e., when state lines or international boundaries had been crossed—and, when no federal crime existed, after 30 days. "The 60-day requirement is likely to result in an extremely stale trial," he emphasized.

De Kamp also is not happy with the bill's provision that parents must notify local police, and request help from state and federal PLS, within 90 days of the alleged abduction. "The presumed purpose of this section is to ensure the exhaustion of local remedies. However, the stringent time requirements may simply lead us back to further attempts at 'self-help'," or child-snatching. He recommended a longer time period —180 days to a year.

Criticism also was voiced that parental kidnapping as defined in the proposed legislation would only apply to children 14 years and under. The full faith-and-credit portion, and the use of the FPLS, would cover kids to 18. Wallop's office said that most snatched children are between three and seven and that by age 14 it is assumed that the child should be able to run away from the abductor, or at least to telephone someone.

Opponents to the current Wallop-Bennett legislation are hard to find, according to their staffs and that of Sen. Alan Cranston (D., CA), a co-sponsor. Last year, the House Subcommittee on Criminal Justice held hearings which produced "overwhelming positive comment" on Wallop's amendment, compared to the 1974 discouraging hearings by the Crime subcommittee. In April, Sen. Cranston's Child and Human Development subcommittee conducted a one-day hearing in Los Angeles with equally positive comment. The American Bar Association, which first opposed such bills, has endorsed Wallop's entire amendment. The Justice Department, which was concerned about federal intervention in family arguments, *may* have changed some of its objections. But the FBI faces a budget cut this year. Extra responsibilities without extra funds could not get much support. And at presstime a Justice Department spokesman had not returned six calls made by *SINGLE PARENT* to learn its present position on the issue.

John McCabe, legislative director, National Conference of Commissioners on Uniform State Laws, said Wallop's amendment appears to meet most of his group's objections to previous bills on the use of the federal kidnapping statute.

Prof. Brigette M. Bodenheimer of the University of California Law School, one of the chief drafters of UCCJA and one of the U.S. delegates to the Hague Conference on Private International Law (involving child-snatching), also supports the legislation. She said at the hearing she had "come to the conclusion that a criminal deterrent is necessary and that the involvement of the FBI is necessary." Professor Bodenheimer also said passage of this bill would facilitate approval of the international treaty next year.

Curiously, three organizations with Washington legislative offices, which you might imagine would have strong stands on the issue do not plan to back—or oppose—the bills: The American Civil Liberties Union, Child Welfare League of America, and National Association of Social Workers. We never were able to get a statement from the National Organization for Women; a spokesman never returned our original call and when we called back, we were always put on "hold."

Some of the fathers' rights groups are against such legislation as being "anti-father in disguise." Male Equality Now (MEN), which claims 3,000 members in Maryland alone, says it "doesn't fool with state or federal legislation; we're not rich. We prefer to work in litigation." However, a spokesman said the Wallop and Bennett bills "are another kind of anti-male legislation being passed willy-nilly. This law would never be enforced against women. It would be just used against men, as is every other law passed which is supposed to help both men and women."

The bill would be effective immediately upon its passage by Congress and signing by the President. Wallop's staff has interpreted its language to cover snatchings that may have occurred years ago—if the trespass continues after the bill becomes law. However, the staff has recommended more specific language on this limitation.

# Single Parent on The Hill

Bob Westgate

## Kidsnatch Treaty Being Studied

The U.S. and 22 other nations are now studying a draft of an international agreement on child abduction. Representatives of Parents Without Partners and *SINGLE PARENT* magazine were invited to help review it at a January meeting of the Secretary of State's Advisory Committee on Private International Law.

By June 1, 1980, the Department will submit its comments to the Special Commission on Child Abduction of The Hague Conference in the Netherlands. After government-level negotiations at the 14th quadrennial of The Hague Conference this fall, it's expected a final treaty will be published. It will go into effect about sixty days after three member nations ratify the agreement, and would become binding on all other countries which later okay it. The U.S. Senate must approve our ratification and the passage/non-passage of similar pending federal legislation will signal to Europeans whether the U.S. is really concerned about the issue.

We found the treaty short, simple, written in plain English and easy to understand—a model of an agreement for wordy attorneys and legislators.

"The proposed convention is intended to prevent child abductions by putting the would-be abductors on notice that the removal of a child to a foreign country, or the wrongful retention of a child abroad, will result in the prompt return of the child by the country of refuge," a member of the U.S. delegation to the Commission said. The Commission has met twice: in March and November, 1979.

Brigitte M. Bodenheimer of the University of California Law School at Davis added that the agreement would also "deal more effectively with the increasing phenomenon of pre-decree abductions" than a similar treaty considered for six years by the Council of Europe at Strasbourg, France. The pact also "seeks to protect visitation rights between parents and children living in different countries."

It would not cover child-stealing for ransom, nor extradition to and from foreign countries. It also would not be retroactive, and so might not be of any legal help to the 269 cases now active in U.S. courts in which parents are seeking the return of their children from overseas. (The 269 figure is broken down to 125, Europe and Canada; 86, Latin America; 44, Near East; 12, Africa; and 2, Far East. In addition, during the first few weeks of January, 1980, an additional eight cases were reported to Children's Rights, Inc., a Washington, D.C. information source on parental kidnapping.)

However, James Hergen of the Office of Foreign Litigation in the Justice Department told *SINGLE PARENT* the signing countries "could follow the 'spirit' of the convention if they chose to for such cases." He was the second delegate. The State Department has no figures on abductions to the U.S., but Justice doubts there are more than 80-100 cases a year, at the most.

Copies of the draft convention and reports on the convention prepared by Professor Bodenheimer are available from *SINGLE PARENT*. Your comments should be sent to Peter H. Pfund, Assistant Legal Advisor for Private International Law, State Department, Washington, D.C. 20520 as soon as possible.

Child abductions were first considered by The Hague Conference four years ago. The Swiss proposed a novel approach: to require "the instant return of an abducted child to the country of origin, to restore the *status quo* without any other consideration."

The convention would apply to abductions:

- before custody had been determined, as well as to those made after decrees;
- or retentions by joint custodians;
- by a parent, as well as a parent's agent,

a relative, a foster parent, a prospective adoptive parent, or anyone else who removes or retains a child to assume its care and control;

- from a parent, relative, guardian, or other person with custody rights, and maybe even an institution;
- of minors sixteen years of age or younger. (The [illegible] limit may be lowered to fourteen or fifteen at the next conference. The Uniform Child Custody Jurisdiction Act (UCCJA) refers to "minors," a term which varies from state to state.)

The convention would require each contracting country to:

- create a "Central Authority" to serve as a clearinghouse for incoming and outgoing applications for the children's return;
- cooperate, exchange information, take steps to locate the children, and prevent their being taken to a third country, which may not have signed the treaty. (In the U.S., the Federal Parent Locator Service would probably be made available for locating children.);
- help bring about the voluntary return of children, or the amicable resolution of the custody or visitation disputes, before a court case is necessary;
- facilitate the start of legal proceedings, when necessary, including aid in obtaining legal representation, and
- arrange help for the actual return of the children.

Time limits—for both applicants and courts—are an important and controversial part of the proposed treaty. First, courts would be under no obligation to order prompt return of children if six months or more had elapsed since they were snatched or retained—or a maximum of a year if they were concealed. However, Bodenheimer said a U.S.-proposed article which "reaffirms the existence of a court's power to order return of the child at a later time was accepted."

There are two reasons for this limit: One, "it was thought that a parent...who is seriously concerned about a child would take immediate action to set the return process in motion. Failure to take such action may be evidence of ambivalence about, or acquiescence in, the assumption of custody and custodial responsibilities by the person who removed or retained the child."

Two, it was believed by many delegates that "...children will generally be integrated into a new cultural environment within a period of six months to a year, and that it may be harmful to them to be uprooted...at a later date." Some delegates questioned this theory; others saw the time limit as a "bonus to a clever kidnapper, placing a premium on concealment." Bodenheimer commented, "We weren't too happy with that limit," and a U.S. proposal to set an overall one-year minimum failed.

The Commission was told it is easier and faster to trace persons in most European countries because of their registration procedures than in the U.S. In Europe the estimated time is three months; here a Child Support Enforcement representative said it's doubtful "...we could find a (hidden) child under two years," because of privacy laws and outdated Social Security records.

The court also has time limits: its action is expected to be "expeditious...and (should) be completed within six weeks." Such promptness is thought feasible "because the court would not consider or reconsider the merits of the custody question." However, Bodenheimer told the group the Commission was somewhat at a loss as to an appropriate sanction in case of non-compliance with the time limit; the court would only have to report the reason for any delay. The court's only duties under the treaty: to determine if there had been a "breach of custody rights," and if so "to order the return of the child forthwith." Applicants who wanted to avoid any possible red tape and delay could begin court proceedings directly, and at the same time--or even later—apply for help from the Central Authority.

The Central Authority would not be required to accept an application for assistance if it were vexatious or frivolous. The court in the country to which the child was abducted, or where it was being retained, would not be required to return the child if it were established by the abductor that:

- the applicant was not actually exercising custody rights at the time of the illegal removal or retention, or if he/she was not acting in good faith—such as having been the initial abductor. (The applicant could be asked to produce a decision from the state where the child normally lived—or even an expert legal opinion—that it had been wrongfully removed or retained. This would be of particular importance in pre-decree abduction cases.);
- if there is substantial risk of exposing the child to physical harm or of placing him in an intolerable situation. (The U.S. will try to change the wording to "if the child be subject to neglect or abuse," or will try to add something to the effect that the child could be returned to an agency, pending a home country hearing.);

*(See ABDUCTION, p. 47)*

ABDUCTION - *from page 21*

- if the child objects to being returned and has attained an age and degree of maturity which makes it appropriate to take account of his or her views. (This may be as young as twelve years.)

The U.S. believes this last exception "places an inordinately heavy burden of responsibility on young children which they are not psychologically equipped to handle, not to speak of the pressures that may be brought to bear upon them by the person with whom they live at the time, and on whom they are fully dependent." However, the Scandinavian countries and the United Kingdom are very much in favor if it.

In addition, Bodenheimer reported that hearing a child's views would automatically lead to a consideration of the merits of the case, and in countries where courts may be somewhat reluctant to return a child brought there by one of its nationals the child could become the ultimate judge of the success/failure of the abduction. She reassured the group that, "judging from private conversations with delegates...the issue will undoubtedly be debated again at the next Hague meeting" in the fall.

Another problem, as yet unsolved, is which courts—state or federal—would have jurisdiction in the U.S. It was claimed at the meeting that federal courts would not want to handle these cases, yet many state courts don't meet regularly, and some have only part-time, untrained judges.

Bodenheimer asserted the convention is not as strong in protecting the legal rights of visitation as it could be. "The Special Commission recognized the frustration of visits between children and non-custodial parents frequently causes abduction; and that, on the other hand, visits of the child to another country may cause wrongful retentions."

She said the Commission had "difficulty in resolving the problems involved." As a result, the treaty as now written only "expresses a general policy favoring international visits, expecially for the benefit of bi-cultural children and parents." It does not address the problem of a custodial parent who removes the child from the country of origin without the permission of that court, thus frustrating the court-ordered visitation privileges of the non-custodial parent.

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Bodenheimer explained the treaty leaves major responsibilities in the area of visitation to the Central Authorities, in the hope of achieving settlements acceptable to both parties. "Ultimately, court proceedings are envisaged," she forecast.

It is not clear what the position of the U.S. will be on a provision to give legal aid to non-resident nationals of other countries on the same basis we offer our own citizens. Bodenheimer said that "...few, if any, foreign citizens whose children are abducted to the U.S. from potential contracting states would be able to qualify under the financial means test prevailing for legal aid in the U.S." It was suggested at the meeting that a list could be made available of attorneys who would be willing to take such cases on a *pro bono* basis.

The Central Authorities in each country would assume their own administrative costs. Travel, translation and child-return costs would be paid by the applicant—except in some states, where a court could make the abductor pay the expenses, as is required by UCCJA here.

Bodenheimer cautioned that the convention will not solve all the problems of international child-snatching. "In the first place, only a limited number of countries would be involved to begin with. Secondly, not every abduction would lead to the return of the child, considering the time limits, exceptions and uncertainties of interpretations of the convention.

"However, Central Authorities in this country and abroad would be able to direct an aggrieved person's efforts into the appropriate channels; the Draft Convention for the first time expresses a strong international policy to return kidnapped children; and courts, as well as other authorities in each contracting state, would be under obligation to carry out that policy to the fullest extent possible.

"It is obvious that on balance the benefits of the convention outweigh its costs," she said.

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Ask the high school counselor or the financial aid administrator for an application. Or write to Box 84, Washington, D.C. 20044 and ask for "A Student Consumer's Guide to Six Federal Financial Aid Programs." It's free. Be sure to fill out the application carefully. Errors can delay processing. APPLY YOURSELF.

United States Office of Education

Parents Without Partners, Inc.,
*Washington, D.C., June 30, 1980.*

Hon. John Conyers, Jr.,
*U.S. House of Representatives,*
*Washington, D.C.*

Dear Mr. Conyers: Enclosed please find the testimony of Patricia McRobert, International Director of Parents Without Partners, and that of Archibald Eccleston, Legal Counsel for Parents Without Partners, both in favor of H.R. 1290, The Parental Kidnapping Bill. We respectfully request that both be entered into the record of the hearing on the Parental Kidnapping Bill held June 24, 1980.

We regret that we were not able to offer oral testimony in favor of the bill, but hope that the Subcommittee members will consider the testimony provided, and realize the urgent need for the passage of H.R. 1290. Thank you for honoring this request, and if PWP can be of any further service, please do not hesitate to contact us.

Sincerely,

Virginia L. Martin,
*Executive Director.*

## Statement of Patricia McRobert, International Director, Parents Without Partners, Inc.

Thank you for the opportunity to speak on H.R. 1290, the Parental Kidnapping Prevention Act.

My name is Patricia McRobert, International Director, Zone F, Parents Without Partners, Inc. I am a fourth grade teacher in the Park Hill R-5 School District located in the suburbs of Kansas City, Missouri.

On September 26, 1979, in my fourth grade classroom, I experienced a child snatching incident.

Christine Mongs, age 9 years, lived with her father and grandparents in Kansas City, Missouri. Christine's parents were separated in July 1977, while living in Leesburg, Florida and subsequently divorced in July 1978.

Prior to the divorce in July 1977, Christine was sent to Kansas City, Missouri, to live with her grandparents. The judge made Christine a ward of the court with the custodial decision "open" and stated that this decision would be made when she returned to Florida.

I talked with Mr. Mongs on January 22, 1979, and he relayed to me that Christine's mother has since been awarded temporary custody of her subsequent to her return.

Christine had had infrequent contact with her mother whom she had not seen for 3 years. Her grandmother sensed her nervousness on that morning last September 26, as she answered the phone quickly and hurried to meet the school bus.

She rode the bus to school—then quickly ran to join her mother who was waiting with a car to take them to Kansas City International Airport for the return trip to Florida.

I was routinely taking the daily attendance when the students told me of Christine's disappearance. It was a feeling of fear that quickly saw me go to the principal's office to have our school secretary call the father and grandparents My principal summoned the police who were quick to respond.

Within 30 minutes the father, grandparents and police found Christine and her mother at the Kansas City International Airport waiting for a flight to Florida.

Mr. Mongs relayed to me that the Kansas City (Missouri) Police told him that there was nothing they could do unless an altercation occurred and at such time, both parents would be arrested and Christine made a ward of the Platte County, Missouri Court.

He did not wish this to happen—thus he waits silently hoping his daughter will decide to return to Missouri to live with him.

The Florida court's indecisiveness in granting "open custody" enabled the absent parent to successfully snatch a child with no legal recourse.

There are 22 children in my fourth grade classroom. Nine children (41 percent) live with their nuclear family. Six students (27 percent) are members of a reconstructed family. Seven (32 percent) live in a single parent family home.

During this school year I have observed the trauma and anxieties experienced by these children as they continue to shuffle between parents.

The children of divorce in my room expressed fear and apprehension as they were concerned for Christine's safety. Several of them verbalized to me how they would react should this happen to them and asked me what should they do?

It is unfortunate that children become pawns between the parents thus creating scars they will carry their lifetime. The emotional trauma was and is prevalent with children who are "prospectives" to be snatched by their absent parents. It is most unfortunate that they must live in fear of such frightening incidents while trying to be a child and cope with their daily lives.

I feel we need to penalize these parents who cannot abide by the court's decisions.

The child's feelings should be considered. Reciprocity among states should help to stabilize the child custody issue and discourage those parents who seem unable to abide by the court's decision.

I urge you to make S. 105 a law in order to better protect the children of divorce from these traumatic experiences.

Thank you.

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## STATEMENT OF ARCHIBALD ECCLESTON III, LEGAL COUNSEL, PARENTS WITHOUT PARTNERS, INC.

My name is Archibald Eccleston. I am counsel for Parents Without Partners, Inc. and a senior partner in the law firm of Eccleston and Seidler located in Baltimore, Maryland.

Parents Without Partners, is a non-profit, charitable, educational organization comprised of approximately 187,000 members, all of whom are single parents. On behalf of Parents Without Partners, and as an attorney with an extensive family law practice, I appreciate the opportunity to address this subcommittee and to lend our support to Congressman Bennett's Parental Kidnapping Bill, H.R. 1290. "Child Snatching" is horribly damaging emotionally to those children subjected to this traumatic act and quite often physically damaging. The magnitude of the phenomenon is, I suspect, much greater than many people believe. The Library of Congress estimates that more than 25,000 child snatchings occur annually. Private groups who monitor child snatchings estimate that as many as 100,000 incidents occur annually.

The Uniform Child Custody Jurisdiction Act, which is now the law in most of our states, is a step in the right direction, but obviously insufficient to resolve the problem. As someone who is familiar with child snatching, both as legal counsel for the largest single parent organization in the world and as a practicing attorney involved in a number of these cases, I have been actively interested in all legislation concerning child snatching.

With the increased occurance of divorce in our country, the problem is an ever increasing one. In a domestic case my office handled, I witnessed the unfortunate spectacle of a 6-year-old boy being hospitalized with bleeding ulcers as a result of his being snatched back and forth between warring parents. Multiply this episode thousands upon thousands of times each year and you will have an approximation of the severity of this horrendous, national social problem.

In order to give the subcommittee an idea of the roadblocks and frustrations encountered by a parent whose child has been taken, I would like to cover some of the more salient points of a copy of a letter I received recently from a mother in South Dakota requesting help. Her child, a boy of 8 years of age, was spending a regular 2-day visitation period with his father which commenced on May 25, 1979 and ended May 27, 1979. On May 28, 1979 when the child was not returned, his mother frantically contacted relatives of her ex-husband in Nevada, California, and Colorado. They had not heard from her ex-husband at that time. On further personal investigation she found that he had quit his job, moved from his apartment and cancelled his phone service—all on May 25, 1979; the day he left with their son. On May 29, the mother contacted her attorney to determine what steps could be taken. She was informed by her attorney that he could not be of any assistance and that she must solicit the assistance of the state authorities. She then proceeded to contact the State's Attorney's Office where she was advised that they would "look into it." They gave her very little encouragement, stating that is was strictly a civil case. On June 5, 1979, she filed a missing person report with the Sheriff's office and with the Department of Social Services and Child Custody Agency. In early June, on her own, she sent change of address cards to her ex-husband's creditors hoping she might trace his whereabouts in that fashion. She did finally trace her ex-husband as far as Utah and forwarded that information to the States attorney in South Dakota.

On June 27, she wrote the Governor and was informed that [illegible] was not under his authority. The Governor forwarded a copy of her letter to the State Attorney General. A letter from the Attorney General advised her that he, too, was unable to help and he forwarded a copy of her letter to the County State's Attorney. The mother then contacted her U.S. Senator who replied and informed her that his staff had contacted both the Federal Bureau of Investigation and the South Dakota Division of Criminal Investigation. On July 19, she again contacted the State's Attorney to inquire what could be done. He suggested that she contact her local State Senator regarding state legislation. She was then advised by an attorney of a South Dakota law which had been passed in July 1, 1979 regarding child snatching. She was subsequently advised that the law did not apply to her since it was passed on July 1, 1979 and her son was taken on May 25, 1979. In addition, because the law was applicable only in situations involving non-custodial parents who take or entice away their unmarried minor children from the custodial parent without prior consent, she was advised that it would not apply to her case because her ex-husband merely failed to return the child after prior consent.

On August 17, the distraught mother, on her own, contacted the schools in the area in the belief that they might have received requests for her son's school records from other schools. She contacted her son's doctor in the event that his health records had been requested. She contacted the Register of Deeds in Rapid City and Pierre in the event they received requests for her son's birth certificate, believing that these might be required if her son were enrolled in a new school.

On August 21, 1979, again on her own, she completed and mailed 483 "reward posters" offering $1,000.00 reward for information regarding her son. She sent these to people involved in her ex-husband's usual occupation, elementary schools, unions, State Departments of Education, sheriff's offices and police departments in all areas where her ex-husband had relatives.

On August 28, 1979, the Las Vegas Police Department contacted the Rapid City, South Dakota Police Department and the Pennington County Sheriff's Office to determine if there was a warrant issued for the ex-husband. They had received a poster from a school and were investigating. When they were informed by the Sheriff that there was not a warrant issued, they advised that there was nothing they could do. Her local State's Attorney told her he would "continue checking into the matter."

On August 29, she received a telephone call from a woman who worked in Las Vegas with her ex-husband, and who was interested in the reward. The mother once again contacted the Sheriff's Office and the State's Attorney's Office for help. She was informed that nothing could be done and it was up to her to "steal" her son back. The following morning the mother and her brother flew to Las Vegas only to learn that her ex-husband had seen a poster that day and had left the area, possibly for California.

On September 4, 1979 she contacted a Judge in South Dakota and asked that a warrant be issued for her ex-husband for contempt of court on the basis that her ex-husband had been enjoined prior to the May 25th visitation from removing the child from the State of South Dakota. The judge advised her that because her ex-husband was out of the state that he could only issue an "immediate custody order."

On September 5, 1979 the mother prepared and mailed an additional 250 posters to California. On September 18, 1979 a call was received from a woman in California who advised the mother that her ex-husband had been staying with her, was carrying a gun and using hard drugs. She was advised that her son was "emotionally disturbed and neglected, totally withdrawn, would not play with other children and sits and stares as though he is hollow." The mother again contacted all of the authorities, the State's Attorney, the Sheriff, the Police Department, the Department of Social Services and the Federal Bureau of Investigation as well as the local Judge. Again, she received the same answers, "sorry, there is nothing we can do."

I quote for you the last paragraph of that mother's letter:

"the anger and frustration from being bounced around and told "sorry," over and over again are nothing compared to the very real pain, anguish and torment that I feel without my son. It is an agony that is tearing me to pieces. I have obtained another 500 posters and I will start again. Someday, somewhere I am going to find my son and have him home again. I will never quit. I have had to work two jobs for the past three months to pay for attorney's fees, posters, and wasted trips out of state. Perhaps by keeping so completely busy I might just keep from going insane. Thanks for listening to my story. I cannot truly understand that any human being should have to go through such a nightmare when proper legislation could serve to curb and correct child snatching."

She concludes by asking for help and seeking legislation so that all children everywhere in single-parent households may live normal, decent lives without these traumatizing experiences.

The facts in this case are not atypical, but represent cases which are occurring daily in our country. For myself, for Parents Without Partners, the organization I represent, and for all parents and children who have been subjected to the brutalizing and degrading act of child snatching, I earnestly request your most serious consideration and support for the passage of this important legislation.

It is inconceivable that anyone who has been witness to the terrible trauma inflicted upon our children by child snatching could fail to actively support the enactment of House Bill 1290 and attempt to halt this practice. Without the passage of House Bill 1290, there simply is no effective deterrent, at either the State or Federal level, to prevent parents pursuing custody by child snatching without fear of punishment.

Thank you.

## STATEMENT OF RUSSELL M. COOMBS, ASSOCIATE PROFESSOR, LAW SCHOOL, RUTGERS UNIVERSITY, CAMDEN, N.J.

### A. INTRODUCTION

Mr. Chairman, my name is Russell M. Coombs. I teach in the law school of Rutgers University in Camden, New Jersey. My teaching duties include a course on Children and the Law, and a seminar on Child Custody and Visitation Problems Involving More Than One State. I also am a Vice-Chairman of the Committee on Custody of the A.B.A.'s Family Law Section.

My remarks today are not, however, offered as representing the views of any organization or any individual other than myself.

The main thrust of my testimony is to support the enactment of appropriate federal legislation designed to prevent and control interstate restraint of children in violation of rights of custody and visitation.

The staff of your subcommittee has suggested that I feel free to discuss not only H.R. 1290, the principal House bill relating to what is called "child-snatching," but also the various other pending bills that are relevant to that subject.

As far as I have been able to determine, there have been introduced in the current Congress eleven bills related to child-snatching. The bills are of three kinds: variations of the so-called "Wallop Proposal," bills that merely make child-snatching a federal crime, and bills to give federal courts jurisdiction to enforce certain custody decrees.

### B. VARIATIONS OF THE WALLOP PROPOSAL: S. 105 AND 1722 AND H.R. 1290, 3654, 6015, 7291, AND 7457

#### 1. *Background of the Wallop Proposal*

The bills that are most comprehensive and have the broadest base of support are variations of the "Wallop Proposal," a set of interrelated measures passed by the Senate in the 95th Congress as part of a bill to revise the federal criminal code.[1] The Senate-passed measures can, with some simplification, be summarized as follows:

First, they would have required states, with certain exceptions, to enforce and to refrain from modifying custody or visitation decisions of other states made consistently with jurisdictional criteria modeled largely on those of the Uniform Child Custody Jurisdiction Act (hereinafter UCCJA).[2]

Second, they would have expanded the functions of the existing federal Parent Locator Service (hereinafter PLS) to include the location of parents hiding their children in violation of custody or visitation rights under orders entitled to interstate enforcement.[3]

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[1] S.1437, 95th Cong., 1st Sess., 124 Cong. Rec. S496–503 (daily ed. Jan. 25, 1978), S860 (daily ed. Jan. 30, 1978) hereinafter cited as S.1437].

[2] Id. § 124A (proposed 28 U.S.C. § 1738A).

[3] Id. § 144A (proposed amendments concerning PLS).

Third, they would have made it a federal misdemeanor for parents intentionally to restrain their children in violation of custody or visitation rights arising from such orders, from valid written agreements, or, in the absence of such court orders or agreements, from parent-child relationships.[4] In addition, they would have stated Congressional findings concerning the need and justification for such legislation.[5]

I enthusiastically support prompt enactment of the Wallop Proposal. If the problem known as "child-snatching," and the related problems that arise from child custody disputes involving more than one state or nation, are to be brought under control, it is essential that suitable federal legislation be enacted. The Wallop Proposal is unique among the various proposals made over the years for Congressional action in the soundness of its conception, in the scope of its treatment of the federal aspects of this problem, and in the respect it shows for the proper division of roles between state and federal governments and between civil and criminal approaches to the problem.

My views on many of the basic issues presented by the Wallop Proposal have been set forth elsewhere.[6] I shall therefore confine this portion of my statement to a discussion of the differences among the versions of that proposal that appear in the various pending bills.

2. *Pending criminal code bills*

In the current Congress a criminal code bill, S. 1722, was reported favorably by the Senate Judiciary Committee on January 17, 1980.[7] The bill includes a revised version of the Wallop Proposal.[8] Senate floor consideration of S. 1722 may occur later this month.

As you know, Mr. Chairman, the parent committee of your subcommittee, the House Judiciary Committee, currently is marking up a criminal code bill, H.R. 6915.[9] This bill contains provisions for interstate recognition of decrees and expansion of the PLS [10] but, unlike the Senate bill, would state no findings on this subject and would create no federal criminal offense of child-snatching.

These Senate and House criminal code bills are of special interest for two reasons. The first reason is that they have reached the relatively advanced stages of processing in both Houses described above and may have substantial chances of enactment. The other bills on the subject of child-snatching so far are, as I shall explain in discussing them below,[11] receiving far less favorable and expeditious treatment by the Congress, so their prospects for enactment seem less promising. Second, the child-snatching provisions of these Senate and House code bills best reflect the process of study and refinement to which the Wallop Proposal has been subjected from February of 1978 to the present. The pending code bills contain a few substantial improvements over the 1978 version of the Wallop Proposal.[12] At the same time, these bills preserve the terms of the 1978 version in several respects as to which unwise changes have been incorporated in certain of the other pending bills.[13]

*a. S. 1722.*—The Senate code bill contains all four basic elements of the Wallop Proposal: findings, a requirement that states enforce and not modify other states' decrees made consistently with specified jurisdictional criteria, expansion of the PLS, and creation of a federal misdemeanor.

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[4] Id. § 101 (proposed 18 U.S.C. § 1624).

[5] Id. § 144A.

[6] Hearing on S.105 Before the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources and the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary, 96th Cong., 2d Sess. (Jan. 30, 1980) [hereinafter cited as 1980 Senate Parental Kidnapping Hearing]; Reform of the Federal Criminal Laws: Hearings on S.1722 and S.1723 Before the Senate Comm. on the Judiciary, 96th Cong., 1st Sess. 10627-37, 10669-74 (1979) [hereinafter cited as 1979 Senate Code Hearings]; Coombs, "The Snatched Child Is Halfway Home in Congress," 11 Fam. L.Q. 407, 421 (1978) [hereinafter cited as "Snatched" Child].

[7] S. Rep. No. 96-553, 96th Cong., 2d Sess. (1980).

[8] Id. at 583-87, 1253-55; S.1722, 96th Cong., 2d Sess. § 101 (proposed 18 U.S.C. § 1624), § 126 (proposed 28 U.S.C. § 1738A), and § 171 (findings and proposed amendments concerning PLS) [hereinafter cited as S.1722].

[9] H.R. 6915, 96th Cong., 2d Sess., 126 Cong. Rec. H2190 (daily ed. Mar. 25, 1980) [hereinafter cited as H.R. 6915]. This bill was introduced by Congressman Drinan, chairman of the Subcommittee on Criminal Justice of the Committee on the Judiciary, and by four of the seven other members of that subcommittee, as a result of the intensive work by the subcommittee for a period of many months in 1979 and 1980 on criminal code legislation.

[10] Id. § 716.

[11] See pp. 10, 15, 16 infra.

[12] See pp. 5-7 infra.

[13] See pp. 11-15 infra.

A major improvement in the current Senate code bill over the one passed by the Senate in 1978 is that the provision delaying its effective date has been made inapplicable to the civil child-snatching provisions.[14]

S. 1722 otherwise makes no substantive change in the PLS provisions of the 1978 Senate code bill. The only significant recent development concerning those provisions is the action of the Department of Health, Education and Welfare in stating at a Senate hearing this year that it opposes the PLS measure contained in the Wallop Proposal.[15] The representatives of HEW mentioned privacy concerns and the economic cost of expansion of the PLS, but appeared unable to explain why those factors require deletion of the PLS provision from the Wallop Proposal but would not justify termination of the existing PLS function of enforcing support obligations. Neither was the witness able to respond effectively to a scathing criticism of his position by Senator Wallop during the hearing. My own opinion is that the department's virtually unsupported reluctance should not be considered a sufficient reason not to enact this portion of the Wallop Proposal.

In the provisions requiring states to enforce other states' decrees, S. 1722 deletes exceptions that would have permitted a state in effect to reverse another state's decree whenever it considered the decree to be based primarily on "punishment of a contestant" rather than on "the best interests of the child," [16] and whenever it considered the decree inconsistent with its own "strong public policy." [17] Those exceptions have received forceful criticism from the Justice Department,[18] a representative of the Commissioners on Uniform State Laws,[19] and others.[20] Among the various reasons given for deletion of one or both of the exceptions were that the exceptions would weaken the effectiveness of the legislation, showed insufficient regard for the proper relationships among states and between the federal government and the states, and were inconsistent with the terms and thrust of the UCCJA.[21] The reasons for elimination of the exceptions are, when analyzed in detail, so cogent that they have led to deletion of both exceptions in every pending bill, and to Professor Brigitte Bodenheimer's withdrawal of her suggestion of a narrowed exception for "punitive" decrees.[22] In this respect S. 1722 is much improved over the 1978 version of the Wallop Proposal.[23]

The provisions requiring interstate enforcement of decrees have been revised also by the addition of a new subsection [24] modeled on UCCJA section 6(a) and designed to prevent a state from exercising jurisdiction in a proceeding commenced during the pendency of a proceeding in another state consistent with the jurisdictional standards of the act.[25] This change in the proposal, though less vital than that discussed just above, is likewise an improvement.

The other major change is found in the criminal provisions. The Justice Department, while expressing opposition to the federal criminalization of child-snatching, proposed and explained this change as follows: [26]

"* * * The revision limits the criminal provision to restraint in violation of an order entitled to enforcement under proposed 28 U.S.C. 1738A, by deleting two alternative sources of rights capable of criminal violation, a 'valid' written custody agreement and a 'right of custody [sic] or visitation arising from * * * the relationship of parent and child, or guardian and ward * * *'

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[14] S.1722 was in this respect amended in committee at the author's suggestion. 1979 Senate Code Hearings at 10637. The thirty-month delay provided for the effective date of that bill consequently is inapplicable to the civil provisions on child-snatching, which would take effect immediately on enactment of the bill. S. 1722 § 134(a)(1). In contrast, the version of the Wallop Proposal passed by the Senate in 1978 would have taken effect some twenty-four months after its enactment. S. 1437 § 134. The other pending bills embodying the Wallop Proposal treat this issue variously. The current House code bill provides without exception for a delay in its effective date until the fourth January first that occurs after its enactment. H. R. 6915 § 901. The bills that would enact the Wallop Proposal as legislation separate from criminal code reform, see notes 43-46 infra, contain no provisions concerning their effective dates and would therefore become effective upon enactment.

[15] 1980 Senate Parental Kidnapping Hearing (testimony of Louis B. Hays).

[16] S. 1437 § 124A, proposed 28 U.S.C. § 1738A(a)(1).

[17] Id., proposed § 1738A(a)(2).

[18] 1979 Senate Code Hearings at 10630, 10632-33 n.1.

[19] Legislation to Revise and Recodify Federal Criminal Laws: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 95th Cong., 1st and 2d Sessions 2817-20 (1977-78) (statement of John M. McCabe, Legislative Director, National Conference of Commissioners on Uniform State Laws) [hereinafter cited as 1977-78 House Code Hearings].

[20] See, e.g. *id.* at 1013, 1017-18 (testimony and statement of Romona Powell), 2562-63 (statement of Prof. Brigitte Bodenheimer), 2809 (statement of Congressman John E. Moss).

[21] See, e.g., views cited notes 18-20 supra.

[22] See Parental Kidnapping [sic], 1979: Hearing Before the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 1st Sess. 48, 53, 61 (1979) [hereinafter cited as 1979 Senate Parental Kidnapping Hearing]; 1977-78 House Code Hearings at 2562.

[23] See 19[illegible] Senate Parental Kidnapping Hearing (prepared statement of Wallace J. Mlyniec and Nancy Hiestand [illegible]3).

[24] S.1722 § 126 (proposed 28 U.S.C. § 1738A(g)).

[25] See 1979 House Code Hearings at 10630-31; "Snatched" Child at 421.

[26] 1979 Senate Code Hearings at 10631.

"The deleted language would have created a number of serious problems. It would have required federal authorities to determine rights of custody, the best interests of children, and the validity of custody agreements without the benefit of prior civil court rulings in the cases. It would have permitted a vindictive parent to bypass his state civil and criminal remedies in favor of the more harsh and less constructive federal criminal sanction. It would have increased the number of cases involving federal authorities, by preventing state authorities from screening out groundless claims. It would have placed federal authorities, in some cases, in a crossfire between conflicting charges of federal crime by both spouses and conflicting orders of two or more states. It would actually have encouraged parents to snatch their children before litigation, by offering parents who were successful in such a tactic the prospect that federal criminal authorities would then enforce the new status quo. It would have created the anomalous situation that some state court orders that were not entitled even to civil enforcement by other states would receive criminal enforcement by the federal government, and this * * * [in] an area of law where state responsibility is primary and practically exclusive.

"On the other hand, deletion of that language does not deny the aid of the federal criminal authorities; rather, it merely requires that a claimant establish his right in a civil court of the appropriate state before invoking the federal criminal role. Since a temporary order satisfactory [sic] for that purpose can be obtained expeditiously under the proposal, deletion of this language does not substantially weaken the criminal provision."

This change clearly improves the criminal provision, and has been endorsed in testimony on similar legislation.[27]

While further study of the policy of the Wallop Proposal has led to those refinements of its provisions, further analysis of the constitutional basis for Congressional power to enact such provisions has been undertaken as well. The Justice Department has concluded that on a properly substantiated record the Commerce Clause [28] could sustain legislation such as proposed in section 1738A,[29] and Wallace Mlyniec, Director of the Juvenile Justice Clinic of the Georgetown University Law Center, has stated that Congress has power under the Commerce Clause as well as the Full Faith and Credit Clause [30] to enact the various elements of the Wallop Proposal.[31] In addition, the findings included in S. 1722 contain language [32] designed to invoke the power of Congress under section five of the Fourteenth Amendment to enact legislation enforcing due process rights.[33]

*b. H.R. 6915.*—The provisions of the House code bill on interstate recognition of decrees and on the PLS are identical in substance to those of S. 1722, except that their effective date would be delayed by some three years.[34] The House bill omits, however, findings that with varying language are found in every other version of the Wallop Proposal and that, if enacted, might aid an affirmative determination of the constitutionality of the legislation. Furthermore, the House bill contains no criminal provisions aimed specifically at child-snatching.[35]

The question whether federal child-snatching legislation should include a criminal offense is a controversial one. The interest of the lay public, which is intense and, understandably, rather emotional, is focused on federal criminal measures almost to the exclusion of other provisions.[36] There are, apparently, aspects of the problem of child-snatching to the solution of which a grant of federal criminal jurisdiction would make a significant contribution, particularly by empowering the F.B.I. to find parents whom the PLS cannot locate.[37]

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[27] See, e.g., 1980 Senate Parental Kidnapping Hearing (prepared statement of W. Mlyniec and N. Hiestand). But see id. (prepared statement of Children's Rights, Inc.). See generally "Snatched" Child at 425-26 n. 58.

[28] U.S. Const. art I, § 8, cl. 3.

[29] 1980 Senate Parental Kidnapping Hearing (prepared statement of Paul Michel, Acting Deputy Attorney General).

[30] U.S. Const. art. IV, § 1.

[31] 1980 Senate Parental Kidnapping Hearing (prepared statement of W. Mlyneic and N. Hiestand, and letter of Feb. 15, 1980, from W. Mlyneic to Senator Charles McC. Mathias, Jr.).

[32] S. 1722 § 171(a)(4).

[33] U.S. Const. amend XIV, §§ 1, 5; *cf.* Ratner, "Child Custody in a Federal System," 62 Mich. L. Rev. 795, 827 n. 153 (1964) (suggesting due process clause basis for federal legislation limiting exercise of state custody jurisdiction over nonresidents).

[34] See note 14 supra.

[35] But see H.R. 6915 § 101 (proposed 18 U.S.C. §§ 2321-24) (parents come within certain prohibitions of kidnapping and aggravated criminal restraint).

[36] See, e.g., 1980 Senate Parental Kidnapping Hearing (prepared statement of Harold H. Miltsch at 6, that of Virginia H. Burt at 4-5, and that of Children's Rights, Inc. at 3-16).

There are also, however, substantial bases for the opposition of the Justice Department and the misgivings of other observers[38] concerning the federal criminalization of such parental conduct. It is reasonably feared that some vindictive parents will attempt to abuse the federal criminal jurisdiction,[39] that the application of criminal procedures and sanctions to parents may do psychological or economic harm to affected children,[40] and that in view of the high incidence of child-snatching the resources of the federal criminal justice system will unduly be diverted from activities, such as control of organized crime and public corruption, in which the federal criminal role is even more vital.[41] In any event there seems to be a recognition, among professional if not among lay observers, that any federal criminal provision should be reserved for exceptional cases and even then applied typically as a locating device rather than a punitive one.[42] The potential value of the criminal provisions is so much less than that of the provisions for interstate recognition of decrees that the issue of criminalization, for all the strong opinions it provokes, should be considered secondary.

### *3. Wallop Proposal bills separate from criminal code legislation*

One Senate bill, S. 105,[43] and three House bills, H.R. 1290,[44] 3654,[45] and 7291,[46] would enact all four basic elements of the Wallop Proposal as legislation separate from comprehensive criminal code legislation. H.R. 7291 is identical to S. 105. H.R. 1290 and 3654 differ somewhat from S. 105. All four bills differ from the versions of the Wallop Proposal found in the current and previous criminal code bills. Yet another House bill, H.R. 7457,[47] has been introduced so recently that I have not seen a copy of it, but I assume it is a version of the Wallop Proposal. It was introduced by Congresswoman Bouquard and referred jointly to the Committees on the Judiciary and Ways and Means.

*a. S. 105 and H.R. 7291.*—S. 105 was introduced by Senator Wallop and currently is cosponsored by at least 25 Senators. Upon its introduction in January of 1979 it was referred to the Criminal Justice Subcommittee of the Judiciary Committee. In April of 1979 a hearing on the bill, chaired by Senator Cranston, was held by the Child and Human Development Subcommittee of the Labor and Human Resources Committee, despite the lack of a referral to that committee.[48] Then in January of this year a second hearing, chaired this time by Senator Mathias, was held jointly by that subcommittee and the Criminal Justice Subcommittee.[49] However, the chairman of the Criminal Justice Subcommittee, Senator Biden, has declined a request of several Senators to schedule a subcommittee markup of the bill.[50] Senator Biden has given the progress of similar legislation in the criminal code bills as the reason for inaction on S. 105, and in any event seems to have displayed no great interest in the enactment of federal child-snatching legislation. The likelihood that S. 105 will be processed to Senate passage must, therefore, be considered slight.

H.R. 7291, the House bill identical to S. 105, was introduced by Congressman Mathias on May 7, 1980, and referred jointly to the Committees on the Judiciary and on Ways and Means.

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[37] *See id.* (prepared statement of Sara M. Keegan at 3). But see "Snatched" Child at 415-17 (predicting that Wallop Proposal civil provisions will, by preventing child-snatching and giving vitality to state sanctions, greatly reduce the incidence of cases requiring federal involvement).

[38] See, e.g., id.; 1979 Senate Parental Kidnapping Hearing at 53-55 (prepared statement of Professor Bodenheimer).

[39] See, e.g., 1980 Senate Parental Kidnapping Hearing (prepared statement of Wallace J. Mlyniec and Nancy Hiestand at 10-11).

[40] See, e.g., "Snatched" Child at 416-17; Bodenheimer, "Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications," 65 Calif. L. Rev. 978, 987-88 (1977); letter from Alan A. Parker, Assistant Attorney General, U.S. Department of Justice, to Congressman Peter W. Rodino, Jr. at 3 (Feb. 19, 1980) (citing "potential for violence and, consequently, danger to the child" on F.B.I. arrest of parent) [hereinafter cited as Parker letter].

[41] See, e.g., 1980 Senate Parental Kidnapping Hearing (prepared statement of Paul Michel, Acting Deputy Attorney General, at 9-10).

[42] See, e.g., 1980 Senate Parental Kidnapping Hearing (letter of Feb. 15, 1980, from Wallace J. Mlyniec to Senator Mathias at 1, 6-7). See generally id. (prepared statement of Russel M. Coombs at 29-31).

[43] S. 105, 96th Cong., 1st Sess., 125 Cong. Rec. 8372 (daily ed. Jan. 23, 1979) [hereinafter cited as S. 105).

[44] H.R. 1290, 96th Cong., 1st Sess., 125 Cong. Rec. H227 (daily ed. Jan 23, 1979) [hereinafter cited as H.R. 1290].

[45] H.R. 3654, 96th Cong., 1st Sess., 125 Cong. Rec. H2264 (daily ed. Apr. 23, 1979).

[46] H.R. 7291, 96th Cong., 2d Sess., 126 Cong. Rec. H3386 (daily ed. May 7, 1980).

[47] H.R. 7457, 96th Cong., 2d Sess., 126 Cong. Rec. H4333 (daily ed. May 29, 1980).

[48] 1979 Senate Parental Kidnapping Hearing.

[49] 1980 Senate Parental Kidnapping Hearing.

[50] Letter from Senator Joseph Biden, Jr., to Senator Malcolm Wallop (Apr. 28, 1980).

Some of the differences between S. 105 (and the identical House bill, H.R. 7291) and the version of the Wallop Proposal found in S. 1722 are significant, but none are fundamental.

Most importantly, the provisions on interstate recognition of decrees in S. 105 are identical in substance to those in S. 1722, and differ only in purely technical matters of drafting.

The same is true of the PLS provisions, except that S. 105 specifies that the PLS can be used to locate a parent not only to enforce a custody order itself but also to enforce the federal criminal prohibition against interstate violation of such an order.[51] This added language is unnecessary, since any use of the PLS to enforce the criminal prohibition will necessarily be useful also in enforcing the underlying civil decree.

To the findings that originally were part of the Wallop Proposal, S. 105 adds a statement of six "general purposes" of the act.[52] The stated purposes all relate to interstate aspects of custody matters so whether or not they contribute substantially to the bill, they do not appear to detract from it. The same cannot be said of S. 105's other substantial addition to the proposal. It is a declaration that "in furtherance of the purposes of section 1738A . . . State courts are encouraged" to afford priority to custody cases and to award travel expenses, attorneys' fees, costs of private investigations, and other expenses in certain kinds of custody cases.[53] The provision would apply to intrastate as well as interstate cases. It could well be considered an unnecessary and inappropriate intrusion, though a precatory one, into matters that should remain questions of state law and policy.

It is in the criminal provisions that S. 105 makes the greatest number of changes in the Wallop Proposal. Again in this part of the bill, however, the changes are not fundamental. Apart from a number of obviously technical changes of mere draftsmanship,[54] there are certain changes that might appear substantive but actually are not. S. 105's definitions of key terms and its requirements for federal criminal jurisdiction are more precisely tailored to the child-snatching offense than is possible for those elements of S. 1722, since in the code bill the same definitions and requirements have application also to offenses other than child-snatching.[55]

Nevertheless, in substance the definitions and jurisdictional reach of S. 105's and S. 1722's criminal provisions are virtually identical. Likewise, the difference between S. 105's 60 days[56] and S. 1722's 24 hours,[57] as the periods of restraint of a victim after which the existence of federal investigative jurisdiction is presumed, is insignificant since both bills preclude the exercise of such jurisdiction for 60 days.[58] Similarly, S. 105's requirement that any sentencing guidelines for this offense "shall include a reduction" in the penalty where the defendant returns the child unharmed[59] merely clarifies, rather than changes, the thrust of S. 1722's requirement that the body promulgating such guidelines "consider the effect" the return of the child should have on the sentence.[60]

One real difference between the criminal provisions of the two bills is that, in S.105, proposed section 1203 of title 18 includes a paragraph commanding that "the State parent locator service shall promptly seek the assistance of the Federal Parent Locator Service * * * " in locating a parent and child.[61] Although it is indeed desirable for state locator services to take such action, it appears inappropriate to include such mandatory instructions to state agencies in this new section of title 18 of the United States Code. Another significant difference is that the criminal provisions in S.105 would take effect upon enactment.[62]

S.105 makes three other changes in the criminal provision that are significant. First, it sets the maximum fine at $10,000 rather than S.1722's $25,000.

Second, the criminal prohibition of child-snatching in S.1722 applies only to a "parent or guardian,"[63] since in the code bill general offenses of aggravated criminal restraint and criminal restraint apply to all others.[64] The offense in S.105, on the other hand, can be committed by anyone having a relationship to the child of "relatives by blood or marriage, guardians, foster parents, and agents of such persons."[65] Since only a "parent" is expressly excluded from the terms of the existing federal kidnapping law,[66] the effect would be to place a non-parent who comes within the terms of S.105 in violation of both statutes. This would have the advantage of giving the federal authorities a less harsh tool than the Lindbergh law to use against such as grandparents, and the disadvantage of making such offenders liable to prosecution and punishment under either or both of the statutes.

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[51] S. 105 § 4(1), (6).

[52] Id. § 2(c).

[53] Id. § 3(c).

[54] Compare, e.g., S.105 § 5, proposed 18 U.S.C. § 1203(a) (" . . . whoever intentionally restrains a child . . . shall be" punished) with S. 1722 § 1, proposed 18 U.S.C. § 1624(a) ("a person is guilty . . . if . . . he intentionally restrains the child . . . ").

[55] See S. 1722 § 1, proposed 18 U.S.C. §§ 111, 1621-24, 1625(a).

[56] S. 105 § 5, proposed 18 U.S.C. § 1203(c)(2).

[57] S. 1722 § 1, proposed 18 U.S.C. § 1625(c).

[58] S. 105 § 5, proposed 18 U.S.C. § 1203(g)(3); S. 1722 § 1, proposed 18 U.S.C. § 1624(c).

[59] S. 105 § 5, proposed 18 U.S.C. § 1203(f).

[60] S. 1722 § 125, propcesd 28 U.S.C. § 994(m).

[61] S.105 § 5, proposed 18 U.S.C. § 1023(g)(2).

[62] See note 14 supra.

[63] S.1722 § 1, proposed 18 U.S.C. § 1624(a).

The third and final significant difference between the criminal provisions of S. 105 and S. 1722 relates to the provisions both bills make for cases in which the parent aggrieved by an offense fails to report it for more than 90 days, and for cases in which the offender returns the child unharmed within 30 days after issuance of a warrant for his arrest. S. 105 treats either of those circumstances as a "defense," [67] and S. 1722 treats either as a "bar to prosecution." [68] The latter treatment is more appropriate because, as the Senate Judiciary Committee has recognized, ". . . the criteria for their application and the purposes of their creation are more consistent with their determination before rather than at trial." [69]

*b. H.R. 1290 and 3654.*—H.R. 1290 was introduced in January 1979 by Congressman Bennett, and the identical H.R. 3654 was introduced in April 1979 by Congressman Corman. As you know, Mr. Chairman, both bills were referred jointly to your subcommittee and to the Public Assistance and Unemployment Compensation Subcommittee of the Ways and Means Committee.

The bills are identical in substance to S. 105, except that there are major differences in the criminal provisions. The most crucial one is that the House bills reinstate the discredited criminal coverage of violations of custody and visitation rights that arise from "valid" written agreements or even from the mere "parental or guardian relationship" whether or not those rights have been recognized by a state civil court before their federal criminal enforcement is undertaken.[70] For reasons identified above,[71] this expansion of the criminal prohibition fails to strengthen it but would create grave problems of interpretation and application of the statute, would unduly subordinate state and civil law and authorities to federal and criminal ones, would encourage vindictiveness between parents and endanger the interests of children, and would otherwise subvert the sound goals and policies of this legislation.

### C. BILLS THAT MERELY CRIMINALIZE CHILD-SNATCHING: H.R. 131 AND 1302

Two House bills would simply make child-snatching a federal crime. H.R. 131 [72] was introduced by Congressman Bennett, and H.R. 1302 [73] by Congressman Sawyer. Both bills were referred to the Judiciary Committee, where no action on them has occurred. H.R. 131 would amend the Lindbergh law [74] by deleting the exception for parents and providing that the maximum penalty for a parent who violates the statute with respect to his minor child is a $1,000 fine and imprisonment for one year. Similarly, H.R. 1302 would add to the Lindbergh law a provision authorizing up to one year in prison and a $1,000 fine for a first offense, and double that for a subsequent offense, when a parent not entitled to custody takes his child or induces or persuades the child to leave the other parent.

In the very session when the House of Delegates of the American Bar Association endorsed the Wallop Proposal, which of course contained provisions to make child-snatching a federal offense, it defeated a proposal "to support enactment of federal criminal legislation making the wrongful removal of a child from a parent entitled to custody to another state or country a misdemeanor." [75] That action of the ABA showed its recognition that federal criminalization of child-snatching must, if it is to be rational and effective, be coupled with the application of civil measures such as those in the Wallop Proposal. Otherwise, the results would be the mischief described above in connection with H.R. 1290's proposal to criminalize violations of unadjudicated parental rights,[76] as well as additional problems resulting from the absence of even that bill's relative specificity. Under H.R. 131, for example, the federal criminality of a parent's transporting of his child would depend on whether he was considered to have acted "unlawfully." Under H.R. 1302, the issues would include whether the accused was "entitled to custody" and whether the other parent was "legally entitled to the return" of the child. Those concepts are, in the absence of federal civil standards such as those of proposed section 1738A of title 28, virtually incapable of rational and consistent application.

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[64] Id., proposed 18 U.S.C. §§ 1622, 1625, 1625(b).
[65] S. 105 § 5, proposed 18 U.S.C. § 1203(a), (b).
[66] 18 U.S.C. § 1201(a) (1976).
[67] S. 105 § 5, proposed 18 U.S.C. § 1203(e).
[68] S. 1722 § 1, proposed 18 U.S.C. § 1624(b).
[69] S. Rep. No. 96-553, 96th Cong., 2d Sess. 586 (1980); see 1980 Senate Parental Kidnapping Hearing (letter of Feb. 15, 1980, from Wallace J. Mlyniec to Senator Mathias at 1-2).
[70] E.g., H.R. 1290 § 5, proposed 18 U.S.C. § 1203(a)(2), (3).
[71] See pp. 6-7 supra.
[72] H.R. 131, 96th Cong., 1st Sess., 125 Cong. Rec. H161 (daily ed. Jan 18, 1979).
[73] H. R. 1302, 96th Cong., 1st Sess., 125 Cong. Rec. H227 (daily ed. Jan. 23, 1979).
[74] 18 U.S.C. § 1201 (1976).
[75] ABA Summary of Action of the House of Delegates 25 (Aug. 8-9, 1978).

### D. BILLS TO GIVE FEDERAL DISTRICT COURTS JURISDICTION TO ENFORCE STATE CUSTODY DECREES IN INTERSTATE CASES: H.R. 325 AND 772

The other two bills pending in the 96th Congress are H.R. 325 [77] and H.R. 772.[78] They were introduced by Congressmen Fish and Vander Jagt, respectively, and referred to the Subcommittee on Administrative Law and Governmental Relations of the Judiciary Committee. No hearings or other processing of the bill has occurred.

The central provisions of these identical bills would give federal district courts jurisdiction "of any court action brought by a parent or legal guardian of a child for enforcement of a custody order against a parent of the child who, in contravention of the terms of the custody order, has taken the child to a State other than the State in which the custody order was issued." [79]

The Justice Department has stated that it "strongly oppose[s]" such legislation and has offered cogent reasons for its opposition.[80]

First, Congress may lack the constitutional power to enact such a bill. As far as diversity of citizenship is concerned, the bills are not limited to cases involving "Citizens," much less "Citizens of different States." [81] Neither do the bills appear to invoke the jurisdiction of federal courts over federal questions.[82] These bills do not, as do the civil child-snatching provisions of the criminal code bills, purport to exert Congressional power under a distinct constitutional provision such as the Full Faith and Credit Clause [83] in such a way as to create a federal question, state litigation concerning which can lead to review by the United States Supreme Court.[84] Instead, H.R. 325 and 772 simply attempt to give the federal district courts jurisdiction to enforce certain state decrees without regard to the existence of a federal question. Their constitutionality appears at best doubtful.

The Justice Department has noted also that such an act would increase the workload of federal courts in which "the increasing pressure of criminal prosecutions has resulted, in many Federal districts, in extensive delays in important criminal proceedings. Furthermore, . . . the state courts have developed an expertise in domestic relations matters which is totally lacking in the Federal courts." [85]

Apart from those concerns of the Justice Department, it must be observed that these bills would not limit this new jurisdiction of federal district courts to orders made consistently with any specified criteria of personal or subject matter jurisdiction. The lack of such limitations would mean that federal courts either would enforce all custody orders indiscriminately, or would have to select and apply some rules of jurisdictional, procedural or substantive law to govern their decisions to enforce some orders and not others.

If the federal courts pursued the latter course they might, for example, attempt to decline enforcement of orders unless they were enforceable interstate under the laws of the states involved in the cases. However, the variations in the application of such laws even among UCCJA states, [86] and the continued existence in non-

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[76] See pp. 14–15 supra.

[77] H.R. 325, 96th Cong., 1st Sess., 125 Cong. Rec. H165 (daily ed. Jan. 18, 1979) [hereinafter cited as H.R. 325].

[78] H.R. 772, 96th Cong., 1st Sess., 125 Cong. Rec. H178 (daily ed. Jan. 18, 1979).

[79] E.g., H.R. 325, proposed 28 U.S.C. § 1332(e)(1).

[80] Parker letter at 8.

[81] U.S. Const. art. III, § 2.

[82] Id.

[83] U.S. Const. art. IV, § 1. See generally pp. 7–8 supra.

[84] See 28 U.S.C. § 1257(3).

[85] Parker letter at [illegible].

[86] See 1979 Senate Parental Kidnapping Hearing at 37–38 (ABA testimony as to variations and errors in interpretation and application of UCCJA).

UCCJA states of looser standards for jurisdiction and interstate enforcement,[87] mean that uniformity in the exercise of this federal jurisdiction could not be expected unless the federal courts in effect "enacted" the very kinds of uniform jurisdictional standards that are omitted by the bills themselves. Such judicial application of the proposed statute could well be considered inconsistent with its terms. In any event it would work a major and inappropriate change in the relationships between federal legislative and judicial roles, and between federal and state roles in the field of domestic relations. Those problems are compounded by the failure of these bills to preclude federal courts from undertaking the clearly inappropriate task of developing a federal substantive law of custody to be applied in selective "enforcement" of custody orders.

The former course, that of indiscriminate federal enforcement of all custody orders without regard to their jurisdictional, procedural or substantive propriety, would be at least equally mischievous. Child-snatching and forum-shopping before any custody order had been made would be encouraged, since the parent who obtained the first decree could secure its federal enforcement whether or not the order was entitled to enforcement in other state courts.[88] Since states from time to time make conflicting orders for the custody of a particular child,[89] indiscriminate federal enforcement of all orders could result in conflicting decrees of enforcement by various federal district courts.

These two House bills are, for these reasons, fundamentally unsound in their conception.

### E. CONCLUSION

For those reasons, Mr. Chairman, I conclude that the best child-snatching legislation now pending is found in the Senate code bill. I support the enactment of any of the pending bills incorporating the Wallop Proposal, except that I consider it essential that H.R. 1290 and 3654 be amended to delete from their criminal provisions the coverage of mere agreements and familial relationships. I oppose the enactment of H.R. 131, 325, 772 and 1302.

I am grateful for your interest in receiving these comments, Mr. Chairman, and I applaud your work on this important legislation. If I can be of any further service to you or your staff, I hope you will feel free to call upon me at any time.

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FALLS CHURCH, VA., *June 23, 1980.*

HON. JOHN CONYERS,
*Rayburn House Office Building,*
*Washington, D.C.*

DEAR CONGRESSMAN CONYERS: Thank you for the hearing you held on June 24, 1980 concerning the Snatching and Concealment of Children in custody disputes. I hope the Judiciary Committee will act favorably upon HB. 1290 or some similar legislation after having heard what is happening to our children.

To that end I have enclosed a written statement since time did not permit my appearance before the committee. I hope this statement will be entered into the Congressional Record and that my personal plight will be heard to further indicate the need for some Federal legislation to protect individuals from the selfish interests of our provincial local courts when children are taken across state lines for personal gain. This bickering between states and the inability of the state courts to resolve the issues in the "Best Interests of the Children" is, as I mention in my statement, devastating. Our interests are not to make divorce and custody an issue of the Federal Courts but we do need a higher forum to resolve conflicts between states. It is wrong that anyone has been made to suffer what I, and thousands of others, have been made to suffer. It is even more wrong to allow the present system to continue.

Again, I thank you and members of the Judiciary Committee for your consideration and attention to this problem and I hope that my children will not be discriminated against as I have been.

Sincerely,

DONALD E. CLEVENGER.

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[87] *See, e.g.*, Mass. Gen. Laws Ann. ch. 208, § 29 (West Supp. 1980).

[88] *Cf.* "Snatched" Child at 13 n. 23 (discussing similar flaw in different bills in 95th Congress).

[89] *See, e.g.*, *Baird* v. *Baird*, 374 So. 2d 60 (Fla. App. 1979); *Wenz* v. *Schwartze*, 598 P. 2d 1086 (Mont. 1979), cert. denied, 100 S. Ct. 1015 (1980).

## FATHERS GROUPS CONCERNED WITH THE "BEST INTERESTS OF OUR CHILDREN" UNDER OUR PRESENT LEGAL SYSTEM, BY DONALD E. CLEVENGER, REPRESENTING FATHERS UNITED FOR EQUAL RIGHTS AND U.S. DIVORCE REFORM

### FATHERS GROUPS CONCERNED WITH HB 1290

In the interest of this hearing and the groups which I represent, I feel it necessary to recount my personal history in regards to the subject bill. While my case is not entirely an everyday happening in custody struggles, parts of my struggle happen with alarming frequency in the legal jungle that exists. There are cases where a parent must first be found in order to cause him (or her) to face up to their parental obligations of both a financial and supportative nature. Unfortunately there are a great many cases where the Courts find the "best interests of the children" to be of only a fiscal nature. The present system including the Federal Parent Locator Service, appears to be unfairly biased towards mothers and then almost exclusively their financial interests. Where these biases do not exist, the license is granted, in the absence of HB. 1290, to simply cross a state line and seek a more favorable jurisdiction.

Much has been said for the "fairness" of the local state courts and their ability in many cases to cross state lines, my own experiences refute these sayings. Once the states, where there is more than one involved, start bickering over the children the legal expenses become almost beyond belief, at least for the fathers. There is presently no higher Court or forum to attend to these conflicts between states. Even with the Uniform Child Custody Jurisdiction Act, which 40 states now have, the mothers [illegible] more often than not rewarded with custody and substantial child support for "stealing their children" and escaping to a "haven state". It is extremely hard for a father to gain custody of his children in every state. Even should the father "win" custody in one state, the mother need only "snatch" the children and cross a state line to gain a conflicting custody order in another state and more often than not she will also prevent any form of visitation between the father and his children. This has happened to me.

"My own children, then aged 5 and 7, were abruptly removed from their school and my care on November 1, 1978, by my then wife and the mother of my children. I have not seen them since, even though I was awarded "first" custody of them under Case Number J705–1 and J706–1 in the Commonwealth of Virginia where we were then living. The State of Washington subsequently chose to award custody to my ex-wife by entering a conflicting order, Equity Number D119731, granting custody to the mother and restraining me from even seeing my children. This conflicting custody order in the State of Washington was accomplished with that Court's full knowledge of the Virginia custody order. I had notified the local Court in the Seattle, Washington area of my Virginia custody order because I had reason to believe my ex-wife would seek haven there to commence her shopping for more favorable jurisdiction.

As I had expected, this woman did seek her better lot before the Washington courts. I discovered, nearly a month after the fact on December 20, 1978, that the order was signed in the State of Washington granting the mother custody on November 21, 1978 within hours after she had arrived in the State and with that courts full knowledge of the previous Virginia proceedings. At my request and at my expense, the jurisdiction of the Washington court was contested before the Washington Supreme Court through March of 1979. To my dismay the Washington Supreme Court found that the mere physical presence of the children, and a "superior system of justice in Washington" warranted jurisdiction in that state.

It was over a month before I was in any way informed of even the general whereabouts of my beloved children after they were removed from the sanctity of my care and the Commonwealth of Virginia. Even with a valid Virginia custody order awarding me custody of my children and granting me Child Support still outstanding, I was unable to use the services of the Federal Parent Locator Service, because "I did not have physical possession of my children". There was no help, although help was solicited, from any local, state or federal agency. Because of a history of Child Abuse and Neglect on the part of my ex-wife I was also concerned for the physical well-being of my children. Because this was a so-called domestic dispute all agencies chose not to "get involved" I was forced to engage the services of a Private Investigator in an attempt to find my children. To date my efforts to establish contact with my children have been to no avail, other than to line the pockets of numerous attorneys and Private Investigators with many thousands of dollars, nearly $30,000 to date and still spending. This is money that my children will never see.

It is somewhat easier for a woman to hide behind unlisted telephone numbers and to keep moving than it is for a male with his frequently demanding professional obligations. It is interesting, in light of my own experiences, that over 99 percent of the cases pursued by the Federal Parent Locator Service are against males. Especially interesting since men are now winning some 10 percent of the custody cases.

It almost appears that our Federal government is discriminating between the sexes in their support of "domestic disputes". This is not to say the problem is one which confronts only the male of the species. Child-Snatching and Child concealment is accomplished by both sexes, the damage is often more punitive against the father because the mother usually still comes back and collects Child Support for the children she stole and this action is condoned by the Federal agencies in the absence of HB. 1290. The use of children in this demeaning manner to hurt the other parent is wrong regardless of the sex of the parent who perpetuates the act.

Interestingly enough, I have been paying Child Support to the Virginia court since January 1980. These moneys are then, I suppose, forwarded on to my ex-wife. My ex-wife requested the court collect the money since she continues to refuse to divulge the whereabouts of my children. Here I am paying Child Support for children whom I have not seen now for 21 months and presently have no hope for any legal right to see my children. The Uniform Reciprocal Enforcement of Support Act between all states provides for collecting child support from the "father" and all "his" assets are at peril. There is no provision in this uniform act for merely collecting child support from a parent, it is fathers only. Neither is there any provision in this uniform act to allow the "father" to see the children who he is obligated to support, yet.

It has been made simple for my ex-wife to harass me with numerous Court engagements, each of which has cost me dearly both emotionally and financially, under the Uniform Reciprocal Enforcement of Support Act which also provides for the "free" services of the Commonwealth Attorney to "protect the interests of the mother". Even should I be so fortunate as to be granted visitation privileges with my children, their having been removed to a place so far away makes any meaningful contact both expensive and in all ways difficult. HB. 1290 would have helped to prevent all this but it is much too late for this to be of any help to my children. I love my children very much and would like to see HB. 1290 passed to prevent other children from being used and abused as my own have been.

Basically this woman whom I married and loved has cleaned me out. At the end of the marriage. I was left with no home, no automobile, no money, incredible debts and, most important, with no children, Even if my case were uncommon, it should not be allowed to happen. This woman warned me that she would clean me out, but I believed, quite wrongly it turns out, that justice would prevail and I even expected, foolishly, to find some compassion and fairness in the system. I personally know of cases which have drug on (and on) much longer than my case has to date and I know of cases far more extreme and bizarr than mine. This has been a recount of what has happened to me and what is happening to my children and what will go on happening until we get some federal legislation such as HB. 1290 which will protect our children's right to at least Liberty and the Pursuit of Happiness if not to Life itself.

I understand why some states encourage jurisdiction shopping, the Child Support money will be spent in their state, and there is always the possibility of ripping off the Federal Government for Aid to Dependent Children or one of the other "pork barrels" available, but it should not be so. Unfortunately many local Judges feel that the mother is the weaker sex and they need the help of the system. Abandoned mothers do need the help of the system as do abandoned fathers, however, the mother who flees across the country with stolen children is hardly abandoned. No one, especially the children involved, should be abused by the system, whatever the system, and everyone should be able to seek a fair forum when the controversy is between two states who are involved in fighting over the spoils of the system.

Custody disputes should always be left at the level of the local courts until a state line is crossed and the local courts no longer have jurisdiction over the persons involved. The dispute then becomes one between the states, and the individual(s), especially the children, need and deserve the protection of the Federal courts. The problem of Child Snatching is prevalent because there is no protection until Federal legislation is passed and a significant penalty is attached to commission of the act.

After a few days, or 21 months, or 7 years, or more go by with no contact with ones children, and in the absence of HB 1290, the choice becomes one of accepting monthly Child Support obligations without visitation or a re-snatch. We prefer HB.1290. The Federal Parent Locator Service will not even attempt to assist with locating parents or children unless one has physical possession regardless of custody orders. Perhaps the name of the Federal Parent Locator Service should be changed to the Federal Collection Agency for Women and Mothers to be Used Against Fathers Only. The present sexist and rewarding system (if you are the right sex) which has been developed under the auspices of the Federal Government is devastating. The tremendous financial costs which are incurred by parents, especially men, in a custody dispute make custody disputes a rich man's game and even then it is so often devastating and futile. HB.1290 will not eliminate all inequities in the system, but it will make the mere crossing of a state line less attractive to those who seek more favorable jurisdiction.

We are confronted and confounded by a system we did not create and hopefully which we will face only once in a lifetime. Our children must live with the consequences. Many will attest to the unfairness of the present system, and most of us who have confronted the system are appalled by the emotional abuse heaped upon our children who are so frequently used as mere pawns for selfish gain. We have seen 10 states pass the Uniform Child Custody Jurisdiction Act in the last 2 years, including Virginia and Washington. The Uniform Child Custody Jurisdiction Act has had little impact because the dispute is still between two different states and there is no higher forum to resolve the dispute. I personally am very tempted to re-snatch especially since it only costs $2,000 to have my children re-snatched and there is no law against it once I cross the state line. However, I have so far refused the temptation. I am often reminded of the Biblical wisdom of Solomon and prefer to be like the real parent (mother in that particular case) who did have the best interests of the child when she deferred to the pretended mother to save the child. Please help me to not re-snatch my children and cause them still more harm. You can help me by making Child-Snatching an illegal act.

We implore this August body to act favorably upon [illegible]290 with great haste. Our children should have the right to have contact with both parents, should their travels take them across state lines. State courts obviously cannot or will not resolve this situational conflict between themselves in the best interests of the children. Since our state courts have failed so miserably we desparately need the license to appeal to a higher and hopefully fairer forum when the states feel compelled to bicker between themselves and sacrifice the very lives of our children.

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BETHESDA PSYCHIATRIC ASSOCIATES,
*Bethesda, Md., July 8, 1980.*

STEVEN RAIKEN,
*Counsel, House Subcommittee on Crime,*
*Cannon House Office Building, Washington, D.C.*

DEAR MR. RAIKEN: Enclosed is the testimony you requested on H.R. 1290. I sincerely appreciate having had the opportunity to present my opinions. Although they are my opinions, I strongly suspect that they are views that would be supported by many of my psychiatric colleagues. If you have any questions, or if I can ever be of any further assistance to you, please do not hesitate to contact me.

Respectfully,

LEE H. HALLER, M.D.

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## REGARDING H.R. 1290, THE PARENTAL KIDNAPPING PREVENTION ACT, BY LEE H. HALLER, M.D.

### SUMMARY

The kidnapping of a child from the custody of one parent by the other parent is an extremely destructive act which causes significant emotional trauma, to both the child and the parent who loses physical custody of that child. Currently, there is neither effective legal recourse to prevent this occurrence, nor is there any generally effective way for the parent who loses custody of a child to regain that

child if the kidnapping parent leaves the state. H.R. 1290 effectively addresses this issue and should be enacted as federal legislation. Some suggestions are made which hopefully would improve the effectiveness of the statute. The effect on those children who might otherwise have been kidnapped will be to allow them to mature in a stable environment as opposed to having to suffer the effects of being uprooted from their surroundings and having to face the loss of one parent.

The issue of child kidnapping or child-snatching, is a significant one. Every year, thousands of parents suffer the loss of their children, frequently never to see them again. Even though the child is taken by the other parent, the effects on that child, are nonetheless, quite destructive to his/her healthy emotional growth. It is my aim to familiarize you with some of the aspects of this issue, focusing on the emotional consequences. Hopefully, the effect of my presentation will be to convince you of the need for passage of the Bill before you in order to make such an act a crime, and thus, hopefully, prevent many of these kidnappings from ever occurring.

My background is that of a child, adolescent and forensic psychiatrist. The last of these terms reflect the fact that I specialize in those aspects of psychiatry that interface with the law. Primarily, I am in private practice. I am also a Clinical Assistant Professor of Psychiatry at Georgetown University, in Washington, D.C. I am active in national psychiatric organizations, generally devoting my time to various legal aspects of psychiatry. In addition, I have given lectures to both mental health personnel and legal professionals on various aspects of psychiatry and child psychiatry as it relates to the legal system.

In forming my opinions for this paper, I have relied on my personal experience and knowledge as well as reading I have done in the area. I have discussed this topic with others in both the legal and mental health professions. Also, I have read much of the testimony which was given before the Senate Subcommittee on Crime on S. 105, the companion bill to H.R. 1290.

The problem of child kidnapping is a prevalent one. Unfortunately, the exact frequency with which this act occurs cannot be precisely documented. Estimates vary from 25,000 to 120,000 cases per year. It seems likely that the frequency will continue to increase without some action being taken to prevent since the number of divorces is increasing every year and the act of child kidnapping occurs as one of the results of the divorce process.

We cannot know the effect the kidnapping has on many of the children since only approximately one-third of them are ever found and reunited with the original custodial parents. However, by looking at those children who are returned, it is clear that the trauma they have suffered has had a profound psychological effect. Although the specific symptoms vary with the age and personality of the children, almost invariably they return as troubled youngsters. Moreover, they have relatively little in the way of any mature understanding of what has happened to them since the average age of children who are abducted is between three and seven years.

The children are not the only ones who suffer. The parents who lose children pay a high price emotionally as well, suffering numerous painful emotions. Not only is the emotional cost high, but the financial one is exorbitant as well. Statistics from one organization indicate that it is not uncommon for parents to spend upwards of $10,000 a year in their search for their children.

In looking at the effects on children of being kidnapped by a parent, one must keep in mind that in many ways, kidnapping by a parent is similar to kidnapping by anyone else. The event occurs suddenly and sometimes in a violent manner. The children are taken, without any notice whatsoever, from the environment that is familiar to them. Left behind are the other parent, the home they are familiar with, all of their belongings, and all of their friends. The only thing that remains familiar to them is the parents who are taking them. However, it is difficult for children to feel comfortable and secure with these parents, given the manner in which they have been brought together. Moreover, it is difficult, if not impossible, for them to feel secure with these parents when they are told things such as the "fact" that the prior custodial parents hate them and that they must now lie about their name and where they are from.

Thus, the children are uprooted, and one of the things they need most for their emotional growth, i.e. stability of their environmental caretaker, is taken away. Because of this loss, the children may become fearful, anxious, depressed and withdraw into themselves. They have difficulties relating to others which makes the formation of new peer relationships difficult. This problem is complicated by the fact that there may be frequent moves, as the kidnapping parent hops around the country, or even the world, to avoid detection. This repeated moving from place to place further impairs children's ability to regain any sense of stability in their environment and thus inhibits their maturation. The move or moves may cause them to be unable to integrate into new settings. One manifestation of this may well be marked difficulties in concentration in school, such that they fall behind academically as well as emotionally.

In addition, children often see themselves as being the cause of difficulties between the two parents. This being the case, it would seem reasonable to assume that they will also see themselves as having caused the kidnapping. They may perceive it as a means of punishment for some "bad" behavior on their part, although obviously they cannot know what it might be. Not only do they blame themselves, but they may well blame the previous custodial parent as well, for deserting them, or for not preventing the act. Their feelings toward the previous custodial parent may be further twisted by the comments of the kidnapping parent. (The term "previous custodial parent" is meant to imply only physical custody and not necessarily legal custody, since, in a number of these cases, no formal determination of custody has been made in a court of law.)

The parent who loses a child in this manner suffers emotionally as well. The feelings of despair and anguish are intense. There is anger and guilt. The parent may well blame himself for what happened. The parent will grieve for the lost child much as if the child had died. However, there is unlikely to be any resolution of the grieving process since the parent must believe that the child has not died, and will someday be recovered. This likelihood that the child is still alive gives the parent hope, but also interferes with putting the issue aside to go on with life. As a result, a parent may be consumed by the need to get the child back. All other aspects of life become secondary in importance as he/she searches month after month, year after year. At times, the task may seem so hopeless, that depression sets in. This may be to such an extent that psychiatric care is sought for some relief.

Clearly, the undesirable affects noted above on both parent and child should be avoided if at all possible. The enactment of a statute to prevent, or at least diminish, the frequency of child kidnapping would accomplish this end. Therefore, it is my opinion that H.R. 1290 should be passed.

The Bill, as it now stands, represents a significant step in correcting the problem. However, I would suggest some revisions that might further improve its effectiveness. First of all, on page 12 of the Bill, in 1203 (b), a person must restrain a child "without good cause for more than 30 days" before being subject to a fine and/or imprisonment. This waiting period is excessive. Even though the child is restrained, but not concealed, the emotional stress which the child suffers will still be significant. Although the child is with one parent, that parent may not be emotionally available to that child to meet his or her needs. The kidnaping parent, even with the best of motives, will be quite wrapped up in what he or she has done, wrestling with what course to pursue. Thus, this is a time of marked stress to that parent and, as such, he or she will be less available to meet the needs of the child. In addition, there is evidence that frequently a parent does not kidnap a child to benefit the child, but rather to hurt the other parent. In this case, the primary interest will not be in meeting the child's emotional needs. Given this situation, and the young age of the children who are taken, 30 days away from their natural home is an excessively long time. Therefore, I would suggest that the time frame be decreased from 30 days to 7 days.

Secondly, I would suggest that the phrase "without good cause" contained in Sections 1203 (a) and (b) either be eliminated or narrowly defined. The rationale for this is that most parents who kidnap a child will be able to offer some opinion that they had "good cause" and thus gave them an unnecessary defense to their actions.

Thirdly, the term "child" as used in Section 1203 is defined as "a person of not more than fourteen years of age." I would suggest that the age be raised to include any person less than eighteen years of age.

Next, I would suggest that Section 1203(f) (2) (regarding defense to prosecution if the child is returned unharmed within 30 days) be deleted. The act of kidnapping a child in and of itself is a tremendously destructive one. The longer the child is away from its primary parent, the worse the effect, but a kidnapping of any duration is traumatic. Therefore, to allow the perpetrator to escape punishment is antithetical to the purpose of the Bill. Also, by leaving in this provision, a parent can easily take the child for visitation, and keep the child up to 29 days beyond the agreed upon time without there being any legal consequence. Clearly, to have such an act occur repeatedly, would not be in the best interests of the child.

Furthermore, this provision does not seem helpful since it would be almost impossible to return a child "unharmed" after involving him/her in a kidnapping. Due to the nature of the act, the child will almost certainly suffer some sort of psychological harm. To delete the word "unharmed" from the Bill would not be helpful since one would want to be able to prosecute a parent who returns a child within a specified period of time, but has inflicted physical or emotional harm on that child.

Finally, the author suggests that consideration be given to adding another penalty that could be imposed on a parent who violates the statute, i.e. the termination of all parental rights previously due that parent. Any parent who is truly interested in his/her child would certainly not want to risk losing all further rights of custody and/or visitation. Also, if loss of parental rights were a possible penalty, and it were imposed, repeat kidnappings might well be prevented. This is because many of the kidnappings occur by not returning a child from a visitation. If no visitation were granted to the parent, this opportunity for taking the child would be eliminated.

One additional item seems relevant in consideration of this statute. Attention will need to be given to the method by which a child is recovered, should this Bill become law. A violent or tumultuous "snatching" back, even if it occurs at the hands of appropriate authorities, may also be extremely upsetting to the child. Thus, some sort of reasonable and gentle system will need to be provided for the return of the child to the previous custodial parent.

In summary, the act of child-snatching is one which has a devastating effect, not only on the child who is taken, but on the parent who is left behind empty-handed. Federal legislation is needed to alleviate the problem. The Uniform Child Custody Jurisdiction Act (UCCJA) goes a long way toward alleviating the problem. However, it is not sufficient since not all of the states have enacted it. Therefore, there are still havens where a parent could flee with a kidnapped child.

I appreciate having had the opportunity to give input on this Bill. It is my sincere hope that you have found the information helpful.

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